

Court of Appeals No. 32839-9-II

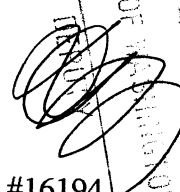
Court of Appeals, Division II of the State of Washington

In re the Marriage of
JOAN HELEN WRIGHT, Appellant,
and
ROBERT DWAYNE WRIGHT, Respondent.

Brief of Appellant

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I. INTRODUCTION

A Decree of Dissolution was entered in this matter based upon a CR 2A Settlement Agreement (“Settlement Agreement”). The Settlement Agreement is void and legally unenforceable based upon many grounds in addition to Joan’s incapacity at the time of the signing of the Settlement Agreement.

Although the guardianship action was subsequent to the Settlement Agreement, the trial judge, Katherine Stolz, was aware of the adjudication of legal incapacity in accord with RCW 11.88 at the time of the motion to vacate the Decree.

The October 31, 2005 order appointing the Guardian for Joan adopted the finding that she is incapacitated as of the date of her closed-head injury due to a car accident in January 2002.

The record before the court on the motion to vacate also included the guardianship file and in particular the report of the October 21, 2005 Report of Guardian ad Litem Virginia Ferguson and the Medical/Psychological Report of Dr. Wanwig.

Report of Guardian ad Litem. She [Joan] cannot understand or comprehend the nature of the decisions facing her necessary to safeguard whatever financial estate she currently has, nor effectively assist counsel in dealing with the multiple issues related to her attempt to set aside her dissolution settlement without considerable difficulty and assistance.

It appears to this investigator that her cognitive processing difficulties for complex or highly stressful matter can be traced

back substantially to the after-effects of her closed head injury in January, 2002.

Medical/Psychological Report of Dr. Wanwig. Organic mental disorder – not expected to improve. Depression – may improve. Impaired memory functions, comprehension is poor; thinking and forming sentences is impaired and depressed mood and energy. Needs specific assistance in understanding legal papers, her medical diagnosis and therapies; and with her finances and money.

Assuming the trial court who heard the dissolution was unwilling to adopt the findings in the order on the guardianship petition that Joan was incapacitated as of the date of the car accident, and therefore continuing to be incapacitated on the date of the Settlement Agreement, Joan's limitations still met the lesser burden of showing that she was mentally incapacitated and could not understand the issues related to the Settlement Agreement. Based on her disability that led to being adjudicated incapacitated, she was also unable to assent to the Settlement Agreement.

II. ASSIGNMENTS OF ERROR

A. The trial court erred in denying appellant's June 22, 2006 Motion to Vacate the January 7, 2005 Decree of Dissolution; Findings of Fact and Conclusions of Law; and the August 19, 2004 CR 2A Settlement Agreement incorporated in the Decree.

B. The trial court erred in denying appellant's September 14, 2004 Motion to Set Aside the August 19, 2004 CR 2A Settlement Agreement.

III. ISSUES REGARDING ASSIGNMENTS OF ERROR

A. Should a CR 2A Settlement Agreement incorporated in a Decree of Dissolution, the Findings of Fact and the Conclusions of Law be vacated when:

- The underlying Settlement Agreement is void because the appellant was incapacitated at the time the Settlement Agreement was signed?
- The appellant lacked the legal capacity to enter into a contract at the time the underlying Settlement Agreement was signed?
- The appellant lacked the capacity to assent to the underlying Settlement Agreement as required by RCW 2.44.010?
- The respondent negotiated the Settlement Agreement in bad faith by failing to disclose all assets of the community and breached his fiduciary duty to his wife by failing to disclose his knowledge of the extent of her incapacity to the court?
- The judge who mediated and witnessed execution of the Settlement Agreement did not recuse herself and decided subsequent motions to vacate that Settlement Agreement?
- A guardian ad litem was never appointed to represent Joan in the dissolution pursuant to RCW 4.08.060?
- A guardian ad litem was never appointed in accord with SPR 98.16W to investigate and report to the court on the Settlement Agreement prior to a hearing on court approval?

B. Should a CR 2A Settlement Agreement incorporated in a Decree of Dissolution, the Findings of Fact and the Conclusions of Law be vacated pursuant to:

- CR 60(b) when the underlying Settlement Agreement was obtained based on mistake, excusable neglect, unavoidable casualty and irregularity?
- CR 60(b)(2) when the appellant was not of sound mind when the underlying Settlement Agreement was signed?

IV. STATEMENT OF FACTS

Joan and Robert Wright were married on December 29, 1980. CP 1, 446. Throughout most their marriage they operated a catering business, known as R & B Catering, Inc.¹ By 2001, the business was generating significant revenues. CP 165, 173, 183, 228-233.

On January 16, 2002, Joan was involved in an automobile collision and suffered a traumatic head injury. CP 423, 433, 446-47. Sometime before the auto accident, Robert had begun restructuring the family finances and estate plan, including sending substantial sums of money to his mother,² all without Joan's knowledge. CP 27, 31-65, 90.

¹ See First Supplemental Designation of Clerk's Papers, Declaration of Joan H. Wright in Support of Temporary Orders, pages 1-2, filed 9/15/2003 in Pierce County Cause No. 03-3-02859-1. A Clerk's Papers citation was not available as of the date of the filing of this brief.

² Although Robert labeled the funds transferred to his mother as "loan payments," the funds were deposited into accounts using his social security number. In 2001 and

After the accident, Robert stepped up his restructuring activities including having Joan sign a Community Property Agreement on March 13, 2002, less than two months after the accident.³ This converted Joan's separate property into community property thereby giving Robert an equal interest in her accident funds.

Unfortunately, Joan never fully recovered from her brain injuries.⁴ The Report of Guardian ad Litem provided to the trial court as a working copy on the motion to vacate included the medical reports of four practitioners.⁵

Dr. Wanwig prepared the Medical/Psychological Report. Dr. Wanwig's findings and prognosis included: Organic mental disorder – not expected to improve. Depression – may improve. Dr. Wanwig summarily identified Joan's history: impaired memory functions, comprehension is poor; thinking and forming sentences is impaired and depressed mood and energy. In that report, Dr. Wanwig's opinions on specific assistance Joan needed: needs help in understanding legal papers, her medical diagnosis and therapies; and with her finances and money.

Katharine Brzezinski-Stein, Ph.D. Dr. Brzezinski-Stein evaluated Joan on 8/15/02 as part of the Social Security disability

subsequently, the interest on those accounts was reported on Robert and Joan's joint federal income tax returns.

³ See First Supplemental Designation of Clerk's Papers, Response Declaration of Robert D. Wright, Exhibit E, filed May 26, 2004

⁴ For an overview of the accident, recovery and Joan's residual impairments, See the Report of Guardian ad Litem filed on October 21, 2005 in the Guardianship of Joan Wright, Pierce County Superior Court Cause No. 05-4-01384-5. A copy is attached hereto as Appendix "B". Addition of the Report of Guardian ad Litem to the Clerk's Papers is pending outcome of a Motion to Supplement the Record of the appellate court.

⁵ The complete medical reports are attached to the Report of Guardian ad Litem attached hereto as Appendix "B". See Footnote No. 3.

determination process. That doctor's report states the following with regard to Joan's:

History. In January 2002, she was in a serious motor vehicle accident in which she sustained a traumatic brain injury with loss of consciousness, along with bilateral hip fractures, a punctured lung, pelvic and rib fractures, and a bladder injury. She was hospitalized for over a month.

Mental Status Examination. Thoughts were reasonably clear, but stream of mental activity was somewhat tangential. Joan was oriented to person, but was one day off on the date and could not name the site of her evaluation. Remote memory functions were poor to fair for past dates and life events.

Diagnosis. Amnestic disorder due to traumatic brain injury and adjustment disorder with depressed mood.

Laura Dahmer-White, Ph.D. Dr. Dahmer-White evaluated Joan multiple times based on a referral from Dr. Brzezinski-Stein. Those first visits were in 9/22/04, 10/13/04, and 11/04/04. On July 28, 2005, Dr. Dahmer-White saw Joan as part of a follow up assessment. That report, *occurring less than a month before the CR 2A Settlement Conference*, noted that Joan continued to experience cognitive sequelae of the motor vehicle accident and traumatic brain injury and needs follow-up with cognitive rehabilitation.

On September 22, 2006. Dr. Dahmer-White opined that: Given that Ms. Wright showed evidence of significant cognitive deficits when evaluated by Dr. Brzezinski-Stein in 8/02 and when she was evaluated by me in 9/04, it is my opinion, with a reasonable degree of medical certainty, that Ms. Wright was incapacitated on the date she signed the settlement agreement in late 2004 or early 2005.⁶

⁶ A copy of the Certification of Dr. Laura Dahmer-White is attached hereto in Appendix "D". A Clerk's Papers citation to this document is pending the outcome of the Motion to Supplement the Record. The Certification was filed in both the guardianship and dissolution.

On August 15, 2002, Joan was evaluated and found to have significant impairments, that she would probably qualify for SSI benefits and would then need a designated payee.⁷

On July 16, 2002, Robert filled out a Daily Activities Questionnaire related to Joan's application for disability benefits. CP 441-444.⁸ In that document, Robert made the following hand-written comments:

- Describe your observations which show a mental or emotional problem. Answer: **Short term memory lapse and concentration problems along with many physical problems since auto accident on 1-16-02.**
- Are you aware of a particular time when these first began to show up? Answer: **Auto accident on 1-16-02.**
- Does he/she have problems paying attention? Answer: **Yes. Unable to pay attention and follow instructions or directions and memory loss since auto accident on 1-16-02.**
- Can he/she follow spoken or written instructions? Answer: **No. Short term memory loss upon spoken instructions – does well with written instructions but bad at puzzles.**
- Can he/she finish what is started? (chores, reading, etc). Answer: **No. Shortness of breath. Needs rest between chores. Unable to sit or lay in one spot long.**
- Does he/she have memory problems? Answer: **Yes. Short term lapse in memory due to auto wreck.**

⁷ Report of Brzezinski-Stein, Ph.D., Exhibit "B" of the Report of Guardian ad Litem attached hereto in Appendix "B".

⁸ A copy of the Daily Activities Questionnaire is attached hereto as Appendix "C".

- Briefly describe his/her relationship with former employers, supervisors and coworkers. Was that behavior at work appropriate? Answer: **Yes. Very good employee.**
- Describe any change there has been in his/her ability to handle money (ie. Shopping, managing a checking/savings account, paying bills). Answer: **Joan has memory and physical problems since the accident so I handle and manage our finances.**

After the accident, Joan was not able to resume her role in the family catering business and the parties often fought.⁹ On or about June 27, 2003, Joan moved out of the community residence taking just over \$100,000 in PIP insurance proceeds from her accident and \$13,000 from a joint bank account.¹⁰

On September 15, 2003, Joan petitioned for dissolution of her marriage.¹¹ For background purposes, between the time the petition for dissolution was filed and the time of the August 19, 2004 Settlement Conference, Joan's attorney filed three motions for financial relief.¹²

The outcome of the Settlement Conference was a CR 2A Settlement Agreement, which is the subject of this appeal. The Honorable

⁹ See First Supplemental Designation of Clerk's Papers, Declaration of Joan H. Wright in Support of Temporary Orders, pages 2-3, filed 9/15/2003 in Pierce County Cause No. 03-3-02859-1.

¹⁰ See First Supplemental Designation of Clerk's Papers, Declaration of Joan H. Wright in Support of Temporary Orders, page 2, filed 9/15/2003 in Pierce County Cause No. 03-3-02859-1.

¹¹ See First Supplemental Designation of Clerk's Papers, Petition for Dissolution of Marriage, filed 9/15/2003 in Pierce County Cause No. 03-3-02859-1.

¹² These documents have not been made a part of the appellate record as they are not relevant to the issues of appeal.

Kathryn Stolz mediated and signed the Settlement Agreement as a witness. CP 150-154. There is some language in the Settlement Agreement about further distribution of personalty, however, each is ordered to keep his/her own bank accounts, and there was no indication whether discovery was outstanding. CP 152-153.

On September 7, 2004, a Nebraska bank provided documents responsive to a subpoena, which documents showed \$180,000 in Robert's name, and which had not been disclosed in the course of the Settlement Conference. CP 27, 33-65. In response, Robert claimed the \$180,000 was really his mother's money even though the account used Robert's social security number. CP 90.

On November 19, 2004, the Honorable Kathryn Stolz, who had mediated and signed the Settlement Agreement, denied Joan's Motion to Set Aside the Agreement. CP 114-120. On January 7, 2005, the trial court entered a decree based on the Settlement Agreement executed at a settlement conference despite Joan's request that it be set aside. CP 155-158, 159-163. Joan's first appeal to this court, under docket number 32839-9-II, was timely filed on February 7, 2005. CP 354-416.

Following the filing of the notice of appeal, Joan was referred to domestic attorney Peggy Fraychineaud-Gross and subsequently obtained appellate counsel Margaret Dore for consultation on appeal. CP 449. In

the end, the undersigned attorney Richard Shepard agreed to represent Joan on the appeal.¹³ Based upon review of the case and consultation between involved counsel that a substantial question existed whether Joan possessed the legal capacity to sign the Settlement Agreement or otherwise to assist her original attorney in the dissolution. CP 446-474.

A petition for appointment of a guardian was filed in Pierce County Superior Court on September 21, 2005.¹⁴ Concurrently, the undersigned requested and obtained a stay of proceedings in this court pending a final determination on the petition for guardianship.¹⁵

An Order Appointing a Guardian of the Estate and Limited Guardian of the Person for Joan was entered on October 31, 2005.¹⁶ In that order, the court adopted the following findings:

Ms. Wright is unable to comprehend financial, legal, or business decisions without assistance. She is incapacitated as of the date of her closed-head injury due to a car accident in January 2002.

At the behest of the appointed guardian, Joan's trial attorney sought vacation of the Settlement Agreement and the Decree of Dissolution on the basis that Joan was incapacitated at the time the

¹³ See Appellate pleading file for Mr. Shepard's Notice of Appearance. See also, August 10, 2006 Notice of Appeal and Certificate of Forwarding. CP 592-595.

¹⁴ The Pierce County Superior Court Cause No. is 05-4-01384-5.

¹⁵ See, Motion to Stay Proceedings in this Court pending disposition of guardianship petition, filed herein on September 28, 2005, and Order Staying Proceedings.

¹⁶ A copy of the Order Appointing Guardian of Estate and Limited Guardian of Person is attached hereto as Appendix "A". A Clerk's Paper citation to this document is pending outcome of the Motion to Supplement the Record.

agreement was executed. CP 446-474. This motion was also heard by the Honorable Kathryn Stolz and denied on July 14, 2006. CP 590-591. The second notice of appeal was filed on August 10, 2006 and the matters consolidated. CP 592-595.

In September 2006, following the Guardian's request, clinical neuro-psychologist, Laura Dahmer-White, Ph.D., advised, in her professional opinion, Joan was incapacitated on the date she signed the settlement agreement...¹⁷

Joan Wright and her guardian are now before this court requesting that the Decree of Dissolution be vacated, that the Settlement Agreement executed on August 19, 2004 be vacated, and that this case be remanded to the Superior Court for trial.

V. ARGUMENT

Standard of Review. The decision to vacate a judgment under CR 60(b) will be overturned on appeal where it plainly appears that the trial court has abused its discretion.¹⁸ Discretion is abused where it is based on untenable grounds or for untenable reasons.¹⁹

¹⁷ A copy of the Certification of Dr. Laura Dahmer-White is attached hereto in Appendix "D". A Clerk's Papers citation to this document is pending the outcome of the Motion to Supplement the Record.

¹⁸ In re Guardianship of Adamec, 100 Wn.2d 166, 173, 667 P.2d 1085 (1983).

¹⁹ In re Schuoler, 106 Wn.2d 500, 512, 723 P.2d 1103 (1986); In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P.2d 118 (1990).

Summary. Here, the denial of the motions to vacate and set aside amount to an abuse of discretion based on untenable grounds and untenable reasons because Joan was incapacitated at the time of the Settlement Agreement and could not assent to or negotiate the agreement.

In a separate Pierce County guardianship proceeding, called to the attention of the trial court on the motion to vacate, the court, in finding Joan incapacitated within the meaning of RCW 11.88, in the Order Appointing Guardian of Estate and Limited Guardian of Person²⁰ found:

(1) Nature of Incapacity: That Joan H. Wright is an incapacitated/client [p]erson as defined by RCW 11.88.010 by reason of mental, emotional, and physical problems, including impaired memory functions, poor comprehension, impaired thinking and sentence formulation, and depressed mood and energy.

Ms Wright is unable to comprehend financial, legal, or business decisions without assistance.

She is incapacitated as of the date of her closed-head injury due to a car accident in January 2002.

(2) Limitation of Rights: That the client should not have the right to, in pertinent part, enter into contract; to appoint someone to act on her behalf; to sue or to be sued other than through a guardian; and to manage her own financial affairs.

Further untenable grounds and reasons include her husband failing to disclose his knowledge of her incapacity to the court; a guardian ad

²⁰ See Appendix "A", Order Appointing Guardian of Estate and Limited Guardian of Person, pages 5, 9-10.

litem was never appointed to assist Joan or investigate the settlement; and her husband misrepresented the community assets to the court.

Guardianship Record. According to RAP 9.10, the appellate court can on its own initiative or on the motion of a party, direct the transmittal of additional clerk's papers and exhibits. A Motion to Supplement the Record with pleadings from the guardianship case, especially those called to the attention of the trial court and argued on the motion to vacate, has been filed contemporaneously with appellant's opening appellate brief.

In light of the appellate court's desire to make rulings on the merits, the court should be aware that in guardianship proceedings, the general rule precluding supplementation of the record with material not in the trial court record will normally be deemed waived and the record supplemented with information so as to apprise the reviewing court of the most current set of circumstances.²¹

This is predicated on the idea that "[s]ituations such as those involving dependent children or incapacitated persons are fluid and ever changing." Id. There, the court stated that the consideration of evidence not previously before the trier of fact allows the appellate court to make a determination in the best interest of the parties. Id. This conclusion gives

²¹ In re Guardianship of Way, 79 Wn. App. 184, 192, 901 P.2d 349 (1995).

the court broad authority to gather all pertinent information relevant to acting in the best interest of an incapacitated person.

Here, the argument in favor of supplementing the record is even stronger since the evidence appellant wishes to supplement the record with including the order of the guardianship finding Joan incapacitated at the time of the Settlement Agreement were before the court in the dissolution proceeding. CP 432, 456, 474. A decision on the merit's of Joan's appeal requires reference to the guardianship record.

Authority. CR 60(b) provides various grounds for vacating a judgment including, in relevant part:

(1) mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) for erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(4) fraud;

(5) the judgment is void;

(9) unavoidable casualty or misfortune preventing the party from prosecuting or defending; and

(11) any other reason justifying relief from the operation of the judgment.

A. Settlement Agreements

The Settlement Agreement signed by Joan when she continued to have mental difficulties as a result of a head injury and was

in reality legally incapacitated is void and unenforceable because she lacked the mental capacity to contract as well as the capacity to assent to the contract.

The Settlement Agreement signed by Joan on August 19, 2004 was incorporated into the January 17, 2005 Decree of Dissolution and formed the basis for the Decree. CP 146-154.

Generally, Settlement Agreements are deemed enforceable if made and assented to in open court on the record.²² However, enforceability is determined by reference to the substantive law of contracts, rather than to the rule or statute.²³ The burden is on the party seeking to enforce the Settlement Agreement by showing there is no genuine dispute regarding the existence and material terms of a Settlement Agreement.²⁴

Washington statutory and case law provide that an attorney has the authority to settle a case on behalf of a client, but the settlement is binding on the client only if it was authorized by the client.²⁵

An enforceable Settlement Agreement must comply with CR 2A which reads:

²² RCW 2.44.010, CR 2A.

²³ Stottlemire v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383, review denied, 100 Wn.2d 1015 (1983); Morris v. Maks, 69 Wn. App. 865, 869, 850 P.2d 1357 (1993). See also, Martinez v. Miller Industries Inc., 94 Wn. App. 935, 974 P.2d 1261 (1999) (Final judgments entered by stipulation or consent are contractual in nature.)

²⁴ In re Marriage of Ferree, 71 Wn. App. 35, 41, 856 P.2d 706 (1993).

²⁵ Long v. Harold, 76 Wn. App. 317, 320, 884 P.2d 934 (1994). See also, Haller v. Wallis, 89 Wn2d 539, 573 P.2d 1302 (1978) (Stipulated judgment void for lack of client's consent.)

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is dispute, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

1. Assent

Under Contract principals, the term “assent” means as to approve, ratify and confirm, and implies a conscious approval of facts actually known, as distinguished from mere neglect to ascertain facts, which requires a meeting of the minds of all the parties to a contract.²⁶

2. Mental Capacity to Contract

To make a valid contract, each party must be of sufficient mental capacity to appreciate the effect of what he is doing, and must also be able to exercise his will with reference thereto.²⁷

The test of mental capacity to contract is whether the person possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he is engaged. It is not necessary to show that a person was incompetent to transact any kind of business, but to invalidate his contract it is sufficient to show that he was mentally incompetent to deal with the particular contract at issue.²⁸

²⁶ Blacks Law Dictionary, 106 (5th ed. 1979).

²⁷ Page v. Prudential Life Ins. Co., 12 Wn.2d 101, 108, 120 P.2d 527 (1942) (quoting 17 C.J.S., Contracts, p. 479 § 133).

²⁸ Id. at 108-109.

Contractual capacity is a question of fact to be determined at the time the transaction occurred and everyone is presumed sane; and that this presumption is overcome by clear, cogent and convincing evidence.²⁹

Applying these contract principles to the instant case, Joan's mental incapacity at the time the Settlement Agreement was negotiated vitiated her ability to enter into the contract. As pointed out in the Memorandum of Law in support of the motion to vacate, Joan's medical diagnosis that followed her car accident included that she suffered from auditory processing dysfunction and amnesic disorder that severely impaired her ability to appreciate or understand the legal proceedings. CP 447. It was implausible for Joan to comprehend the nature and effect of what the contract entailed. Joan told her dissolution attorney Ms. Josephson, that she was signing the agreement in protest. CP 429.

The order on the guardianship adopted the finding that:

Ms. Wright is unable to comprehend financial, legal, or business decisions without assistance. She is incapacitated as of the date of her closed-head injury due to a car accident in January 2002.³⁰

In addition, the guardianship order established limitations on Joan's rights including removing her right to enter into a contract; to marry or divorce; to appoint someone to act on her behalf; to sue or to be

²⁹ Page, 12 Wn.2d at 109 (citing 17 C.J.S., Contracts, p. 479 § 133).

³⁰ See attached Appendix "A", Order Appointing Guardian of Estate and Limited Guardian of Person, page 5.

sued other than through a guardian; and to buy, sell, own, mortgage, or lease property.³¹ Applying the test of mental capacity to contract, the court has stated that it was not necessary to show that someone was:

Incompetent to transact any kind of business, but to invalidate a contract it is sufficient to show that he was mentally incompetent to deal with the particular contract at issue.³²

The facts here more than meet the burden of showing that Joan was incompetent to deal with the particular contract at issue based on the court finding her legally incapacitated from the date of her closed head injury and appointing a guardian of the estate and limited guardian of the person.

In argument on the motion to vacate, Joan's dissolution attorney, Peggy Fraychineaud-Gross referred the court to the Report of Guardian ad Litem as follows:

You have that before you, Your Honor. It has, attached to it, a number of doctors' reports showing that Joan does not have the capacity to contract, to enter into any kind of legal document; and did you have a chance to read through the Guardian ad Litem report because it's quite specific.

Let's see if I can get that exact verbiage, but she finds that there's no question in her mind that Joan is incapacitated; and this came in September and October of 2005, Your Honor, which was more than a year after Joan had signed the CR 2A in August of 2004; so there's little doubt that her disability was worse in August of 2004 than it was in September and October of 2005.³³

³¹ See attached Appendix "A", Order Appointing Guardian of Estate and Limited Guardian of Person, page 8.

³² Page, 12 Wn.2d at 108.

³³ Verbatim Report of Proceedings, July 14, 2006, pages 6-7, lines 21-9.

...[T]he pertinent issue in this case, is that she didn't have the capacity. That's been determined by the Court, even now in October of 2005.³⁴

Even absent the finding of incapacity, the record clearly supports a conclusion in line with Page:

That she was mentally incompetent to deal with the particular contract at issue.³⁵

Counsel for Joan on the motion to vacate stated that the medical records of Joan after her automobile injuries provide indisputable evidence that she would have been deemed incapacitated under RCW 11.88 at the time she signed the Settlement Agreement. CP 457. Counsel argued further on the motion to vacate in support of Joan's incapacity by referring the trial court to the October 21, 2005 Report of Guardian ad Litem Virginia Ferguson:

She [Joan] cannot understand or comprehend the nature of the decisions facing her necessary to safeguard whatever financial estate she currently has, nor effectively assist counsel in dealing with the multiple issues related to her attempt to set aside her dissolution settlement without considerable difficulty and assistance.

It appears to this investigator that her cognitive processing difficulties for complex or highly stressful matter can be traced back substantially to the after-effects of her closed head injury in January, 2002. CP 450-451.

³⁴ Verbatim Report of Proceedings, July 14, 2006, page 8, lines 10-13.

³⁵ Page, 12 Wn.2d at 108.

The complete report was before the trial court on the motion to vacate as a working copy.³⁶ CP 432, 456.

It was further brought to the trial court's attention that Joan had been adjudicated incapacitated in October 2005 by the Order Appointing Guardian of Estate and Limited Guardian of Person. CP 457. In the order on the motion to vacate, the trial court felt that Joan did not meet her burden of proving her incapacity by clear, cogent and convincing evidence. CP 591.

An adjudication of incapacity pursuant to RCW 11.88 should alone amount to clear, cogent, and convincing evidence supporting the motion to vacate. Nonetheless, there was additional evidence supporting Joan's incapacity.

Also before the trial court at the time of the motion to vacate was the declaration of Robin H. Balsam, attorney for Commencement Bay Guardianship Services, the court appointed guardian of Joan. CP 432-445. In that declaration, Ms. Balsam based on her over twenty years experience as an attorney working with individuals adjudicated legally incapacitated and her meetings with Joan on numerous occasions set forth the following notable points with regard to Joan:

³⁶ Verbatim Report of Proceedings, July 14, 2006, page 3, lines 2-4.

- Ms. Wright cannot read a document and digest its content, without significant time to read each sentence several times before she can understand its content. CP 434.
- She cannot make quick decisions and when frustrated and upset, will do whatever needs to be done to make the aggravation go away. CP 433-434.
- Although to date, Ms. Wright's physical injuries have improved, according to her medical reports her cranial injuries are permanent and improvement, if any, is very slow [and] are [her injuries] unlikely to resolve. Thus, at the time Ms. Wright sought the legal services of her initial attorney, Deborah Josephson, for purposes of obtaining a dissolution..., her condition and her ability to comprehend and make sound decisions prior to being adjudicated incompetent was medically worse than her condition now. CP 434.

Not only did Joan lack the mental capacity to contract in August 2004, she lacked the ability to assent in open court pursuant to CR 2A and RCW 2.44.010 to the Settlement Agreement. This amounts to yet another reason the Settlement Agreement incorporated in the 2005 Decree of Dissolution is void and the motion to vacate should have been granted on these grounds as well. Joan's mental limitations stemmed from her January 2002 car accident as opined by the Guardian ad Litem Virginia Ferguson, Dr. Wanwig, Katharine Brzezinski-Stein, Ph.D. and Laura Dahmer-White, Ph.D.³⁷ Those reports include the following:

Dr. Wanwig

- Organic mental disorder – not expected to improve.

³⁷ See attached Appendix "B", Report of Guardian ad Litem. The doctor's reports are attached as exhibits to the Report of Guardian ad Litem.

- Depression – may improve.
- Impaired memory functions.
- Comprehension is poor.
- Thinking and forming sentences is impaired.
- Depressed mood and energy.
- Needs help understanding legal papers.
- Needs help with understanding her medical diagnosis/therapies.
- Needs help with her finances and money.

Katharine Brzezinski-Stein, Ph.D.

- Serious motor vehicle accident in January 2002.
- Joan sustained a traumatic brain injury with loss of consciousness, along with bilateral hip fractures, a punctured lung, pelvic and rib fractures, and a bladder injury.
- She was hospitalized for over a month.
- Thoughts reasonably clear, but stream of mental activity was somewhat tangential.
- Joan was oriented to person, but was one day off on the date and could not name the site of her evaluation.
- Remote memory functions were poor to fair for past dates and life events.
- Diagnosis. Amnestic disorder due to traumatic brain injury and adjustment disorder with depressed mood.

Laura Dahmer-White, Ph.D.

Dr. Dahmer-White evaluated Joan multiple times based on a referral from Dr. Brzezinski-Stein. Those first visits were in 9/22/04, 10/13/04, and 11/04/04. On July 28, 2005, Dr. Dahmer-White saw Joan as part of a follow up assessment. That report occurred less than a month before the CR 2A Settlement Conference.

- Joan continued to experience cognitive sequelae of the motor vehicle accident,

- Traumatic brain injury, and
- Needs follow-up with cognitive rehabilitation.

On September 22, 2006, Dr. Dahmer-White opined:

Ms. Wright sustained a traumatic brain injury in a motor vehicle accident in 1/02.

Her head CT scan at that time also revealed evidence of old bilateral small strokes and periventricular white matter changes.

The guardianship order dated 10/31/05 stated, She is incapacitated as of the date of her closed head injury due to car accident in January of 2002.

Given that Ms. Wright showed evidence of significant cognitive deficits when evaluated by Dr. Brzezinski-Stein in 8/02 and when she was evaluated by me in 9/04, it is my opinion, with a reasonable degree of medical certainty, that Ms. Wright was incapacitated on the date she signed the settlement agreement in late 2004 or early 2005.³⁸

In sum, Joan's mental condition and related incapacity inhibited her ability to understand the settlement conference proceeding as well as the Settlement Agreement. Based on the mental limitations, Joan could not effectively assist her counsel present her case and was unable to assent to a Settlement Agreement.

3. Breach of Fiduciary Duty

The Settlement Agreement along with the Decree are void based on Robert's breach of his fiduciary duty by failing to disclose his knowledge of Joan's lack of capacity to the court.

³⁸ A copy of the Certification of Dr. Laura Dahmer-White is attached hereto in Appendix "D". A Clerk's Papers citation to this document is pending the outcome of the Motion to Supplement the Record.

As part of the processing of Joan for Social Security disability, Robert filled out and signed a Daily Activity Questionnaire on July 17, 2002. CP 441-445. This document was before the trial court on the motion to vacate as an exhibit to Ms. Balsam's declaration referenced above.

In that questionnaire, Robert makes the following statements:

- Short term memory lapse and concentration problems along with many physical problems since the auto accident on 1-16-02. CP 441.
- Unable to pay attention and follow instructions or directions and memory loss since auto accident. CP 441.
- Short term memory loss upon spoken instructions. CP 441.
- Reminder to take [prescriptions] on a routine. CP 443.
- Joan has memory and physical problems since the accident, so I handle and manage our finances. CP 444.
- Unable to do any lengthy activities. Unable to work. Unable to lift or move objects. CP 445.

From Robert's answers above, it is apparent that he had knowledge of Joan's incapacity. However, he failed to disclose his knowledge and attempted to enter into a binding agreement with Joan. Above, he repeatedly stated that she had memory loss and that since the accident, she was unable to pay attention or follow directions. Effectively, Robert took advantage of Joan in the settlement negotiations knowing that she most

likely did not comprehend what was going on, that she was most likely could not remember the extent of their assets, and that she unable to participate in the negotiation as a result of her incapacity.

Washington case law has held that the failure to disclose the opposing party's lack of capacity to the trial court so that the trial court can take the appropriate protective action can render a judgment void.³⁹ Robert's breach of fiduciary duty to Joan further supports the motion to vacate.

In Flaherty, the court held that it was the opposing party's duty to disclose knowledge of the disability so that a Guardian ad Litem could be appointed as set forth in RCW 4.08.060. The court went on to say that:

The statute is mandatory. A person under such legal disability can appear in court only by a guardian ad litem or by a regularly appointed guardian. A guardian has complete statutory power to represent the interests of the ward.⁴⁰

The statutory mandate is not satisfied when the person under legal disability is represented by an attorney. The fact of the wife's civil disability was known to her husband and his attorney. It was incumbent upon them to apprise the court of the wife's incapacity.⁴¹

³⁹ See e.g., In re Dill, 60 Wash.2d 148, 373 P.2d 541 (1962) (Where civil disability of wife was known to husband's attorney, husband's attorney had a duty to inform the court of the wife's condition.); Flaherty v. Flaherty, 50 Wash.2d 393, 312 P.2d 205 (1957) (Husband and husband's attorney on motion to vacate divorce decree had a duty to inform the court of the fact that they knew that wife was presently incapacitated.). These cases are attached hereto in Appendix "F".

⁴⁰ Dill, 60 Wash.2d at 543 (citing Rupe v. Robinson, 139 Wash. 592, 595, 247 P. 954 (1926)).

⁴¹ Flaherty, 50 Wash.2d at 397. (Emphasis added.)

Here, much like Flaherty, Robert was aware of Joan's incapacity. He made lengthy statements in the Daily Activities Questionnaire including the fact that she had concentration problems since the accident; that she was unable to pay attention and follow instructions; and that she had short term memory loss upon spoken instructions. CP 441-444. These statements further support that Joan was unable to enter the Settlement Agreement because she could not assent to the Settlement Agreement and was unable to understand the Settlement Agreement.

Considering these statements along with the other evidence in this file, Joan could not effectively assist her counsel in her representation and should have had a litigation guardian ad litem appointed to act on her behalf in the dissolution.⁴² Additionally, a settlement Guardian ad Litem should also have been appointed to review the CR 2A Settlement Agreement prior to its entry pursuant to SPR 98.16W.

Conclusion. The court may provide relief from a judgment under CR 60(b)(5) if the judgment is void. The trial court had ample evidence showing that Joan was legally incapacitated at the time of the Settlement Agreement and that Robert breached his fiduciary duty to Joan by failing to disclose her incapacity to the court. For these reasons, the Settlement

⁴² RCW 4.08.060.

Agreement is void and legally unenforceable. Therefore, the Decree incorporating the Settlement Agreement is void as well.

B. Civil Rule 60(b)

1. Unsound Mind.

The Decree of Dissolution, Findings of Fact and Conclusions of Law should have been vacated along with the Settlement Agreement because Joan was of unsound mind at the time of the Settlement Agreement and the record lacks reference to her incapacity.

CR 60(b)(2) allows relief from judgment against a party if the proceedings are against a minor or person of unsound mind and their condition did not appear in the record. In the instant case, no reference was made with regard to the Joan's legal incapacity at the time that she signed the Settlement Agreement.

CR 60(b) does not provide a definition of the term "unsound mind" for purposes of vacating a judgment; however, the Washington courts have turned to the Federal Court's interpretation of a federal rule in construing the state rule.⁴³ As stated in Goewey v. United States⁴⁴ and Cobb v. Nizani,⁴⁵ "unsound mind" is defined as a person not understanding the nature and effect of his acts, and of comprehending his legal rights and liabilities.

⁴³ See Pybas v. Paolino, 73 Wn. App. 393, 869 P.2d 427 (1994).

⁴⁴ Goewey v. United States, 612 F.2d 539, 544, 222 Ct. Cl. 104 (1979).

⁴⁵ Cobb v. Nizani, 851 F.2d 730, 732 (4th Cir. 1988).

Some time ago in the case of Adams v. Adams,⁴⁶ the Washington Supreme Court found that where the husband was unable to mentally process the property settlement agreement that he signed due to a bout with the flu, that the Decree should be vacated pursuant to both a provision of unsound mind [now known as CR 60(b)(2)], and that as a result of his impairment, it constituted unavoidable casualty or misfortune preventing the party from prosecuting or defending [now known as CR 60(b)(9)].

The definition provided by the Federal Courts is clearly applicable to this proceeding and Joan's state of mind at the time she signed the Settlement Agreement. At the time the appellant executed the Settlement Agreement, her medical condition made her incapable of understanding her legal rights and liabilities.

At the time of Settlement Conference... Joan was in the midst of medical treatment for her conditions and did not have the cognitive ability to understand what the attorneys and Judge were discussing...

Nor did [she] understand the document [she] signed... "I was very agitated, could not understand what was being proposed and wanted them to stop pressuring me. CP 424.

Thus, the appellant satisfies the criteria for a person with an "unsound mind" or incapacitated person satisfying the threshold for

⁴⁶ See Adams v. Adams, 181 Wash. 192, 42 P.2d 787 (1935).

vacating the Decree of Dissolution, Findings of Fact and Conclusions of Law and underlying Settlement Agreement under CR 60(b)(2).

2. Mistakes, Inadvertence, Excusable Neglect and Irregularity

Mistakes which include failure to recognize mental incapacity support vacating the Decree and the underlying Settlement Agreement.

Mistake. A mistake within the contemplation of CR 60(b)(1), may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence.⁴⁷

Here, numerous mistakes occurred. Among the most notable are Joan's attorney's ignorance of her client's legal incapacity and her client's inability to provide informed consent to the Settlement Agreement. Also notable, is the court's lack of awareness of the incapacity and Robert's failure to bring his knowledge of Joan's mental capacity to the court's attention.

The Washington Court of Appeals held that a trial court's vacation of a dismissal was not an abuse of discretion where it appeared that dismissal resulted from a serious misunderstanding between the plaintiff and the attorney, as result of which, plaintiffs did not in fact authorize

⁴⁷ Black's Law Dictionary, 903 (5th ed. 1979).

attorneys to bind them to settlement and did not have their informed consent.⁴⁸

Similar to Burk, the declaration of Joan that was submitted in conjunction with the motion to vacate evidences that she did not comprehend the CR 2A Agreement. CP 424, 427-429, 431. Her medical diagnoses support her declaration and likewise confirm that Joan lacked the capacity to either understand or consent to the contractual obligations and consequences of the Settlement Agreement.

The medical opinion of Dr. Laura Dahmer-White based on her review of the Joan's records that Joan was incapacitated on the date she signed the Settlement Agreement and the trial court's adjudication of her incapacity in the guardianship order which states:

She is incapacitated as of the date of her closed head injury due to car accident in January of 2002.⁴⁹

Applying the Burk principles, it is clear that there was a misunderstanding between Joan and her dissolution attorney regarding her ability to make informed consent to the agreement and her ability to understand the agreement. The mistakes with regard to Joan's capacity

⁴⁸ See Morgan v. Burk, 17 Wn. App. 193, 563 P.2d 1260 (1977).

⁴⁹ See Appendix "D", Certification of Laura Dahmer-White and Appendix "A", Order Appointing Guardian of Estate and Limited Guardian of Person.

support vacating the Settlement Agreement and the related Dissolution Decree along with the Findings of Fact and Conclusions of Law.

Joan's adjudicated incapacity provides a defense supporting the theory of excusable neglect and the vacation of the Settlement Agreement.

Excusable Neglect. To vacate a judgment on the basis of excusable neglect, the moving party must present sufficient facts constituting a defense to the action.⁵⁰ Joan's medical condition and legal incapacity supported by the record including the Report of Guardian ad Litem provide sufficient facts supporting excusable neglect. Joan did not have the capacity to comprehend the settlement conference, the contract terms or the facts that Robert was not disclosing community assets. In addition, the entry of the Settlement Agreement cut off Joan's right to proceed against the missing funds.

Here, the foregoing arguments including Joan's legally adjudicated incapacity provide adequate grounds to vacate the CR 2A Settlement Agreement, the Decree of Dissolution along with the Findings of Fact and Conclusions of Law.

Irregularities including the lack of a Guardian ad Litem to represent Joan in the dissolution or to investigate the settlement support vacating the Decree and underlying Settlement Agreement.

⁵⁰ Miebach v. Colasurabdo, 35 Wn. App. 803, 808, 670 P.2d 276 (1983).

Irregularities. An irregularity within the meaning of vacation of orders and judgment are those relating to want of adherence to some prescribed rule or mode of proceeding.⁵¹ Here, the irregularities include:

- No appointment of a litigation Guardian ad Litem as set forth in RCW 4.08.060;
- No appointment of settlement Guardian ad Litem to review the CR 2A Settlement Agreement as set forth in SPR 98.16W; and
- The settlement judge, who signed the Settlement Agreement as a witness made later decisions on motions regarding the merit of the settlement agreement when she signed the agreement as witness.

a. RCW 4.08.060.

When an incapacitated person is a party to an action in the superior courts he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

- (1) When the incapacitated person is plaintiff, upon the application of a relative or friend of the incapacitated person.
- (2) When the incapacitated person is defendant, upon the application of a relative or friend of such incapacitated person... If no such application be made within the time above limited, application may be made by any party to the action.⁵²

⁵¹ Adamec, 100 Wn.2d at 175 (citing State v. Price, 59 Wn.2d 788, 791, 370 P.2d 979 (1962)).

⁵² RCW 4.08.060. Text of statute attached hereto in Exhibit "E".

In Flaherty, referenced above, the court in holding that it was the opposing party's duty to disclose knowledge of the disability so that a Guardian ad Litem could be appointed as set forth in RCW 4.08.060. The court went on to say that:

The statutory mandate is not satisfied when the person under legal disability is represented by an attorney. The fact of the wife's civil disability was known to her husband and his attorney. It was incumbent upon them to apprise the court of the wife's incapacity.⁵³

In another case, the court noted that the statute is mandatory. A person under such legal disability can appear in court only by a guardian ad litem or by a regularly appointed guardian. A guardian has complete statutory power to represent the interests of the ward.⁵⁴

Here, much like Flaherty, the husband knew of Joan's disability. On July 16, 2002, more than two years prior to the settlement conference, Robert clearly stated Joan's mental incapacities in the Daily Activities Questionnaire multiple times. CP 441-445. There, Robert referenced Joan's loss of memory four times and also referenced her inability to pay attention. CP 441-445. Robert attributed these problems to the car accident of January 16, 2002. CP 441.

The fact that Joan did not have a Guardian ad Litem to assist her prevented her from effectively communicating with her attorney and failed

⁵³ Flaherty, 50 Wash.2d at 397.

⁵⁴ Dill, 60 Wash.2d at 543 (citing Rupe v. Robinson, 139 Wash. 592, 595, 247 P. 954 (1926)).

to protect her due process rights. Joan lacked the cognitive capacity to comprehend the nature of the proceeding and could not legally assent to any contract. The court failed to apply RCW 4.08.060.

b. SPR 98.16W. As required by the Special Proceedings Rule (“SPR”), where there is a settlement of a claim for a disabled or incapacitated person under RCW 11.88, the court shall determine the adequacy of the proposed settlement on behalf of the person and either accept or reject it.⁵⁵ The SPR outlines the petition that needs to be filed, the necessity of appointment of a settlement Guardian ad Litem and what the report of the settlement Guardian ad Litem should contain.⁵⁶ This procedure was not followed with regard to the Settlement Agreement that further renders it void and supports vacating the Settlement Agreement as well as the Decree of Dissolution.

c. Judge As Witness. “[A] judge is disqualified from hearing a cause if it appears that he will be called as a witness in it.”⁵⁷ If the cause is actually on trial before him, the judge should not take the stand as a witness.⁵⁸ Although a judge may take judicial notice of court

⁵⁵ SPR 98.16W. Text of statute attached hereto in Exhibit “E”.

⁵⁶ RCW 11.92.060(1).

⁵⁷ See State v. Sefrit, 82 Wash. 520, 144 P. 725 (1914).

⁵⁸ State ex rel Carroll v. Junker, 79 Wn.2d 12, 21, 482 P.2d 775 (1971). See Maitland v. Zanga, 14 Wash. 92, 44 P. 117 (1896). See also, 46 Am. Jur. 2d Judges §§ 112-114 (1969).

records, he or she may not take notice of facts based on his or her memory of oral testimony or discussion.⁵⁹

On August 19, 2005, in accordance with the parties' case schedule, a formal settlement conference took place in this matter before the Honorable Judge Katherine Stolz. During the course of this settlement negotiation, Joan maintains that she excused herself during various points of the negotiation process and cried outside. CP 428. She contends that she was not in agreement with the terms of the Settlement Agreement, and that she lacked the capacity to effectively authorize or consent to a contract. CP 428-429. No court reporter was present during the settlement conference and no factual recording occurred on the record. CP 458.

On November 19, 2004, Joan's counsel filed a motion to set aside the Settlement Agreement. The Honorable Judge Katherine Stolz presided over this hearing and stated:

As I recall I did a settlement conference between these two parties. They settled it. They did the CR2 Agreement and Ms. Wright is now moving to vacate that.⁶⁰

Absolutely everything was discussed at the settlement.⁶¹

⁵⁹ See Vandercook v. Reece, 120 Wn. App. 647, 86 P.3d 206 (2004).

⁶⁰ November 19, 2004 Verbatim Report of Proceedings, Page 2, Lines 15-18.

⁶¹ November 19, 2004 Verbatim Report of Proceedings, Page 12, Lines 12-13.

Based on Washington State law, Judge Stolz's statements regarding discussions that took place on the August 19, 2004 settlement conference is improper testimony by a judge as a witness. Judge Stolz's recollection and statements that, "Everything was discussed at the settlement" is not a judicially noticeable adjudicative fact under Washington State evidentiary rule, ER 201. Under ER 605 a judge may not testify as a witness:

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve this point.⁶²

When a court engages in off-the-record fact gathering, it essentially has become a witness in the case.⁶³ Here an irregularity occurred when the settlement Judge became the "Trial Judge" and made rulings based upon her recollection of off the record discussions.

As in Carroll it was error for Judge Stolz who mediated the Settlement Conference and witnessed the Settlement Agreement to preside over motions challenging the agreement - another department should have heard the motions.⁶⁴

For this reason alone the Decree and the order denying vacation of the decree should be set aside and the matter remanded for further

⁶² ER 605.

⁶³ See e.g., Lillie v. United States, 953 F.2d 1188 (10th Cir. 1992).

⁶⁴ Carroll, 79 Wn.2d at 21.

proceedings regarding Joan's capacity to execute the Settlement Agreement and Robert's financial disclosures prior to and at the settlement conference. The court did not adhere to Washington State Rules of Evidence, particularly, ER 605 and ER 201.

When Judge Stolz attested to her recollection of facts that occurred during the Settlement Conference, she committed an error that resulted in an irregularity in the parties' proceeding that provides grounds to vacate the Decree of Dissolution, Findings of Fact and Conclusions of Law and underlying Settlement Agreement.

d. Undisclosed Assets. There is some language in the CR 2A agreement about further distribution of personalty, however, each is ordered to keep his/her own bank accounts, and there is no indication whether discovery was outstanding. CP 150-154. On September 7, 2005, a Nebraska bank returned a subpoena with records showing \$180,000 in Robert's name. CP 33-65.

In September 2004, Joan moved to set aside CR2A agreement based in part on discovery of \$180,000 in husband's Nebraska account, which had previously not been disclosed or discovered, and on the basis of fraud and irregularity in the proceedings. CP 27, 31-82. This motion was denied on November 19, 2004. CP 114-120.

The appellant argues that pursuant to orders of the Court, the court was required to have before it and review certain financial information ordered to be exchanged in order to determine whether a contract was fair at the time of its execution, and since the court that ordered the discovery did not have such information before it, and did not conduct a review hearing in accordance with the prior order, the Court failed to adhere to prescribed rule or mode of proceeding, giving rise to an "irregularity" under CR 60(b)(1), which defines irregularities as those relating to want of adherence to some prescribed rule or mode of proceeding.⁶⁵

In sum, the prescribed mode of proceeding regarding the settlement of claims for incapacitated persons and the appointment of a litigation guardian amount to irregularities justifying vacating the Decree and underlying Settlement Agreement. Similarly, the judge who appeared as a witness making comments about her recollection of the settlement conference, of which there is no transcribed record, and deciding later motions in the case also supports vacating the Decree.

3. Fraud, Misrepresentation and Misconduct

Fraud, misrepresentation, misconduct and unavoidable casualty in the proceedings support vacating the CR 2A Settlement Agreement.

⁶⁵ Adamec, 100 Wn.2d at 174.

Fraud, misrepresentation, or other misconduct are valid reasons to vacate settlement agreements.⁶⁶ Under CR 60(b)(4), a party may be entitled to vacate a Decree by showing that the opposing party's misrepresentation (or misconduct) lead to the entry of a judgment such that the losing party was prevented from fully and fairly presenting its case or defense.⁶⁷ Misrepresentation requires specific knowledge and intent by the wrongdoer.⁶⁸

In Snyder v. Tompkins, the Washington Court of Appeals held that a client is bound by an agreement that the *client authorized*, unless fraud or overreaching is shown.⁶⁹ In the instant case, the underlying Settlement Agreement was first of all not knowingly authorized by Joan and was overreaching because Robert was well aware of the Joan's mental disabilities at the time the Settlement Agreement was signed by the parties. The issue of client authorization on the Settlement Agreement is mute based upon Joan's mental incapacity and lack of ability to assent or authorize a contract following the January 2002 car accident. The order

⁶⁶ CR 60(b)(4).

⁶⁷ Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 526 (1990).

⁶⁸ Sarvis v. Land Resources, Inc., 62 Wn. App. 888, 893, 815 P.2d 840 (1991), review denied, 118 Wn.2d 1020 (1992).

⁶⁹ Snyder v. Tompkins, 20 Wn. App. 167, 173, 579 P.2d 994 (1978) (emphasis added).

appointing a guardian confirmed that Joan was incapacitated as of the date of her closed-head injury due to a car accident.⁷⁰

With regard to specific knowledge supporting misrepresentation, Robert had knowledge and misrepresented to the court Joan's mental incapacity; the profitability of the family business; and the Nebraska bank account bearing his social security number with a balance of \$180,000. CP 33-65, 441-445.

In the Daily Activities Questionnaire Robert references Joan's inability to comprehend subject matter without the ability to read it numerous times and have substantial time to absorb its content. CP 441-445. The trial court has inherent power to appoint a Guardian ad Litem for a litigant in a civil matter upon a finding that the litigant is incapacitated.⁷¹

In this case, Joan should have had a Guardian ad Litem appointed on her behalf in the dissolution proceeding to assist her in comprehending the proceedings and an additional Guardian ad Litem to investigate the proposed settlement. She had no such benefit. Her incapacity continues and was certainly present in August of 2004 when the Settlement

⁷⁰ See Appendix "A", Order Appointing Guardian of Estate and Limited Guardian of Person.

⁷¹ In re the Marriage of Blakely, 111 Wn. App. 351, 358, 44 P.3d 924 (2002); Vo v. Pham, 81 Wn. App. 781, 784, 916 P.2d 462 (1996); RCW 4.08.060.

Agreement was signed. This proceeding afforded Joan inadequate time based on her incapacity to review the documents or absorb any of the content of what she was asked to sign.

In construing CR 60(b)(4) the Washington State Court of Appeals stated in the case of Marriage of Burkey,⁷² in part:

The only conclusion which arguably might support vacating the decree on the basis of fraud is that Mr. Burkey breached a fiduciary duty owed his wife to make known the value of all the property owned by the community. Id. at 489.

Information presented in this case clearly showed that the Robert had 25 years experience in the financial industry before the parties married. CP 3. Thus, he would know how to hide money if he wanted to. Throughout the pretrial pleadings he was selective in showing only snapshots of the catering business to the court, focusing mostly on bills. CP 7-12, 479-494. There is never a complete picture, such as bank ledgers, balance sheets or Profit & Losses, for R & B Catering, Inc. shown to the court. He failed to acknowledge his interest in the \$180,000 trust account until after it was discovered. CP 33-65, 90.

In addition, CR 60(b)(9) permits vacation of a judgment as a result of unavoidable casualty or misfortune that prevented a party from

⁷² See Marriage of Burkey, 36 Wn. App. 487, 675 P.2d 619 (1984).

prosecuting or defending his or her case. In Barr v. MacGugan,⁷³ the court upheld a vacation of a Decree by a party when that party's attorney suffered from a mental disability such that it affected the attorney's ability to properly defend the case. The court determined that generally an attorney's negligence is not a basis to set aside a decree; however, when that negligence or incompetence is caused by a mental illness or disability, vacation of the Decree is appropriate.⁷⁴

In this case, Joan was still suffering from a mental disability as a result of her head trauma injuries from her January 2002 automobile accident. She was clearly incapable of participating in the prosecution and/or defense of her case. From the record and lack of disclosure, it appears that Joan's counsel was seemingly unaware of Joan's disabilities.

Discovery had not been completed prior to the signing of the Settlement Agreement and as a result, there were facts that were unknown to Joan's counsel. These facts include Robert withdrawing of \$180,000 from an undisclosed account, which was not discovered by Joan's attorney until after the signing of the Settlement Agreement. Joan objected to

⁷³ See Barr v. MacGugan, 119 Wn. App. 43, 78 P.3d 660 (2003).

⁷⁴ Barr, 119 Wn. App. at 47. The court noted that it was relying on Federal Court interpretations as no Washington decisions had addressed this issue and although CR 60(b)(9) was cited by the parties, no case law was provided by the parties based on CR 60(b)(9), only CR 60(b)(11).

signing the Settlement Agreement, but her protests fell on deaf ears. Joan's incapacity caused by the 2002 car accident precluded her from participating in the prosecution of her case. Joan was mentally unable to assist her counsel in making any decisions or authorizing any settlement.

For these reasons, the Decree, Findings of Fact and Conclusions of Law should be vacated along with the underlying Settlement Agreement.

4. Other Reasons Justifying Relief

CR 60(b)(11) permits a court to vacate a judgment for any other reason justifying relief. The operation of CR 60(b)(11) is confined to situations involving extraordinary circumstances not covered by any other section of the rule.⁷⁵ A dissolution decree may be vacated for extraordinary circumstances to overcome a manifest injustice.⁷⁶ The extraordinary circumstances must relate to irregularities extraneous to the action of the court.⁷⁷

In Barr v. MacGugan,⁷⁸ as noted above, the court found that where the attorney suffered from a mental disability, vacation pursuant to CR 60(b)(11) was appropriate. This standard was applied to the party in an

⁷⁵ In re Marriage of Hammack, 114 Wn. App. 805, 809, 60 P.3d 663, review denied, 149 Wn.2d 1033 (2003) (citation omitted).

⁷⁶ Hammack, 114 Wn. App. at 810.

⁷⁷ Tang, 57 Wn. App. at 655-56..

⁷⁸ Barr, 119 Wn. App. at 47.

early case in which the party suffered from the flu and was found to be incompetent to enter into a contract.⁷⁹

The same applies in the instant case. During the course of this dissolution proceeding, Joan's severe mental impairment was the extraneous factor not taken into consideration in the proceeding. Joan was not capable of comprehending the agreement. She is still incompetent as a result of the 2002 car accident and was certainly incapacitated from the date of the January 2002 car accident as stated in the order on the guardianship petition.⁸⁰

The Decree of Dissolution, Findings of Fact and Conclusions of Law and underlying CR 2A Agreement entered in January of 2005 were based on mistaken information, that being that the August 2004 Settlement Agreement was based on a knowing authorization from Joan who was incapable of authorizing such an agreement.⁸¹

Joan's inability to comprehend the nature of the legal proceedings as well as her rights and liabilities as they related to her dissolution proceeding represent manifest injustice. At the very least a guardian ad

⁷⁹ Adams, 181 Wash. at 195.

⁸⁰ See Appendix "A", Order Appointing Guardian of Estate and Limited Guardian of Person.

⁸¹ Id. Appendix "A", See also, Appendix "B", Report of Guardian ad Litem with medical reports attached. As mentioned previously, Clerk's Papers citations to these documents are pending the outcome of the contemporaneously filed Motion to Supplement the Record.

litem should have been appointed to act on her behalf in regard to the settlement conference and a guardian appointed to investigate the Settlement Agreement.

C. Attorney's Fees

Appellant is entitled to attorney's fees and costs based on RAP 18.1(a), RCW 26.09.140 and RCW 11.96A.150.

Fees on Appeal. This court should award fees and expenses to Joan as a result of having to file an appeal. RAP 18.1(a) authorizes an award of attorney's fees if applicable law grants to the party the right to recover reasonable attorney fees. RCW 26.09.140 specifically confers upon appellate courts the discretion to award costs, including reasonable attorney's fees to parties on appeal as does RCW 11.96A.150.

RCW 26.09.140. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to commencement of the proceeding or enforcement or modification proceedings after entry of judgment

Upon any appeal, the appellate court may, in its discretion, order a

party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.⁸²

The standard in RCW 26.09.140 also favors granting Joan attorney's fees related to the appeal and dissolution. Considering the financial resources of the parties:

Robert

- Continues to operate a catering business.
- Is living in the family community home.
- Siphoned community monies to his mother assumingly for his benefit.
- Had his incapacitated wife sign a community property immediately following a serious car accident in which she sustained a traumatic head injury to change the character of her separate property insurance proceeds to community property.
- Failed to disclose Joan's disability.

Joan

- Legally incapacitated.
- Living on Social Security Disability of approximately \$1,400/month.
- No assets to assist her with expenses.

as stated in RCW 26.09.140, Joan can barely afford to live from one month to another, let alone afford the attorney's fees and costs related to the appeal and dissolution. In contrast, Robert continues to reap the benefits of a business that the two of them built together. As Robert stated in the Daily Activities Questionnaire, Joan was a good employee. CP 442. He may have treated her like an employee; however, she put forth her

⁸² RCW 26.09.140 . Text of statute attached hereto in Exhibit "E".

efforts in many ways to make R & B Catering a thriving, prosperous business.

Here, the appellate court has multiple bases to support an attorney's fees award in favor of appellant Joan. Based on the finding of incapacity in the guardianship proceeding, Joan should never have had to bring this appeal to vacate the Decree and Settlement Agreement. Robert knew of Joan's incapacity and failed to disclose this to the court thereby breaching his fiduciary duty to his wife as the opposing party.

RCW 11.96A.150. Costs and reasonable attorney's fees may be assessed against any party to the action.

- (1) Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorney's fees, to be awarded to any party: (a) From any party to the proceedings...in such a manner as the court determines to be equitable.
- (2) This section applies to all proceedings governed by this title, including but not limited to...properties, and guardianship matters. This statute [section] shall apply to matters involving guardians and guardians ad litem and shall not be limited...⁸³

The overall purpose of Chapter 11.96A is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates...⁸⁴ In drafting the Chapter, it was the intent of the legislature that the courts have full and ample power and

⁸³ RCW 11.96A.150. Text of statute attached hereto in Exhibit "E". (Emphasis added.)

⁸⁴ RCW 11.96A.010.

authority to administer and settle all matters concerning the estates and assets of incapacitated persons...⁸⁵ Matters include any issue, question, or dispute involving the determination ofother persons interest in an estate...⁸⁶

Here, based on Joan's legally adjudicated incapacity, her estate is at issue. The guardian has a duty to protect Joan's estate and issues in the dissolution that affect her estate cannot be resolved without acknowledging the guardianship over Joan. RCW 11.96A.150 provides secondary, additional grounds supporting an award of attorney's fees and costs in favor of Joan.

The court can award fees at its discretion. For these reasons, Joan should be awarded attorney's fees for the appeal and for prosecuting the dissolution. She should be awarded all fees related to trying to get a fair distribution of the community property. Likewise, according to the broad authority under RCW 26.09.140 and RCW 11.96A.150, Joan is entitled to fees for accounting for all community assets.

VI. CONCLUSION

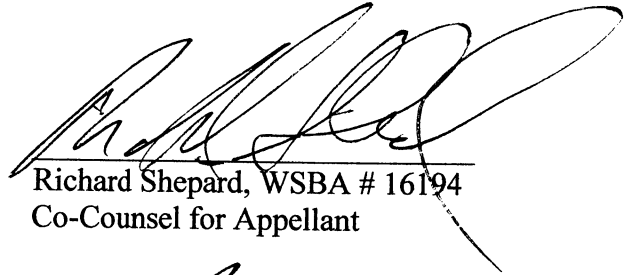
Joan asks the appellate court to:

⁸⁵ RCW 11.96A.020(1)(a).

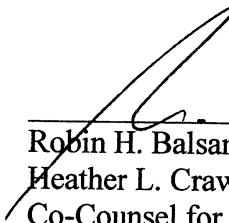
⁸⁶ RCW 11.96A.030(1)(a).

- 1) Vacate the Decree of Dissolution along with the underlying Settlement Agreement, Findings of Fact and Conclusions of Law;
- 2) Remand the matter for trial on the dissolution and order that the matter be assigned to a new department; and
- 3) Order attorney's fees and costs related to appeal and dissolution including all fees and costs related to accounting for community assets.

Respectfully submitted this 26 day of March, 2007.



Richard Shepard, WSBA # 16194
Co-Counsel for Appellant



Robin H. Balsam, WSBA #14001
Heather L. Crawford, WSBA #29962
Co-Counsel for Appellant
Attorneys for Guardian

APPENDIX "A":
ORDER APPOINTING GUARDIAN OF ESTATE AND
LIMITED GUARDIAN OF PERSON



FILED
IN PIERCE COUNTY SUPERIOR COURT

A.M. OCT 31 2005 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Guardianship of:

NO. 05-4-01384-5

JOAN H. WRIGHT,

ORDER APPOINTING GUARDIAN OF
ESTATE AND LIMITED GUARDIAN OF
PERSON

An Incapacitated Person.

I. GUARDIANSHIP SUMMARY

Reporting Requirement:	3 years	Scheduled:	_____
Person and/or Estate:	Both		
Bond Required:	Yes ()	Amount \$_____	No (X)
Inventory Required:	Yes (X)	No ()	
Date of Order Appointing:	October 31, 2005		
VA Served:	Yes ()	No ()	N/A (X)
DSHS Served:	Yes ()	No ()	N/A (X)
Personal Care Plan Required:	Yes (X)	No ()	

ORDER APPOINTING GUARDIAN - 1

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ORIGINAL

BALSAM McNALLEN LLP
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

1

CLIENT

2

Name: Joan H. Wright

3

Address: 34813 - 72nd Ave East
Eatonville, WA 98328

4

5

GUARDIAN OF ESTATE AND LIMITED GUARDIAN OF PERSON

6

Name: Commencement Bay Guardianship Services

7

Address: 609 Tacoma Ave. South
Tacoma, WA 98402

8

Phone: (253) 627-7605

9

Fax: (253) 572-0912 Email: rhb@balsamlaw.com

10

STANDBY GUARDIAN

11

Name: Marie Lawrie

12

Address: 609 Tacoma Ave. South
Tacoma, WA 98402

13

Phone: (253) 677-9225

14

Fax: (253) 572-0912

15

ATTORNEY

16

Name: ROBIN H. BALSAM

17

Address: 609 Tacoma Ave. South
Tacoma, WA 98402

18

Phone: (253) 627-7605

19

Fax: (253) 572-0912 Email: rhb@balsamlaw.com

20

INTERESTED PARTIES

21

Name: Peggy Fraychineaud Gross, attorney for Joan H. Wright

22

Address: 620 Commerce Street, Suite 230
Tacoma, WA 98402

23

Phone (wk): (253) 272-7152

24

Name: Jeffrey Hendricks, son

25

Address: 38413 - 72nd Avenue East
Eatonville, WA 98328

26

27

ORDER APPOINTING GUARDIAN - 2

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1 Name: Patricia Taylor, sister
2 Address: 533 West Davis
3 Exeter, CA 93221

4 II.

5 THIS MATTER having come on regularly for hearing this 31st day of
6 October, 2005, before the above entitled Court, the proposed guardian of the
7 estate and limited guardian of the person, COMMENCEMENT BAY
8 GUARDIANSHIP SERVICES, appeared by counsel, ROBIN H. BALSAM of
9 BALSAM McNALLEN LLP. The alleged incapacitated Person, JOAN H. WRIGHT,
10 appeared by and through her attorney PEGGY FRAYCHINEAUD GROSS, and the
11 Guardian ad Litem, VIRGINIA R. FERGUSON, appeared and gave testimony; and
12 the Court, having considered the report of the Guardian ad Litem and having
13 considered all of the testimony herein, and being otherwise fully advised in the
14 premises, now, therefore, the Court makes the following Findings of Fact:

15 I. FINDINGS

16 1. Notice: That JOAN H. WRIGHT was personally served with notice
17 of these proceedings and a copy of the Petition for Appointment on September 23,
18 2005. That all notices required by law have been given.
19
20
21
22
23
24

25 ORDER APPOINTING GUARDIAN - 3

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1 2. Identification of Alleged Incapacitated/client Person. That Joan H.
2 Wright is 60 years old. The client was born on September 18, 1945, and currently
3 resides at 34813 - 72nd Avenue East in Eatonville, Pierce County, Washington.

4 3. Hearing Date: October 31, 2005

5 4. Purpose: To appoint a guardian of the Estate and limited guardian of
6 the Person of Joan H. Wright.

7 5. Appearances at Hearing: The following persons appeared at the
8 hearing:
9

10 a. The proposed guardian of the estate and limited guardian of the
11 person, COMMENCEMENT BAY GUARDIANSHIP SERVICES, by
12 and through its Director, ROBIN H. BALSAM;

13 b. the Guardian ad Litem, VIRGINIA R. FERGUSON;

14 c. the attorney for Petitioner, PEGGY FRAYCHINEAUD GROSS;

15 d. the alleged incapacitated/client Person (XX) did (___) did not
16 appear;
17

18 6. Evidence: The report of Guardian ad Litem and the medical report of
19 J. Daniel Wanwig, M.D., as well as the reports of Katharine Brzezinski-Stein, Ph.D.,
20 Laura Dahmer-White, Ph.D., and Marcialyn McCarthy, MA.Ed., were considered in
21 addition to the verified Petition, along with the testimony of the proposed
22
23
24

25 ORDER APPOINTING GUARDIAN - 4

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1 guardian; JOAN H. WRIGHT, the alleged incapacitated/client, did () did not ()
2 testify.

3 7. Jurisdiction: That the facts set forth in the Petition are true and
4 correct, and the Court has jurisdiction over the parties and the subject matter of
5 this action.
6

7 8. Venue: That venue is properly set in Pierce County, Washington.

8 9. Nature of Incapacity: That Joan H. Wright is an
9 incapacitated/client Person as defined by RCW 11.88.010 by reason of mental,
10 emotional, and physical problems, including impaired memory functions, poor
11 comprehension, impaired thinking and sentence formulation, and depressed mood
12 and energy. Ms. Wright is unable to comprehend financial, legal, or business
13 decisions without assistance. She is incapacitated as of the date of her closed-
14 head injury due to a car accident in January 2002.
15
16

17 10. Presence at Hearing: That there is good cause, other than mere
18 inconvenience, for waiving the presence of the client at the hearing as set forth in
19 the Guardian ad Litem report as follows: Joan H. Wright WAS present at the
20 hearing.
21

22 11. Appointment of Attorney: That there () was (XX) was not a need
23 for the appointment of counsel for Joan H. Wright.
24

25 ORDER APPOINTING GUARDIAN - 5

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1 12. Nature and Value of Estate: That the client's estate consists of the
2 following:

- 3 a. Checking account: less than \$1,500.00
4 b. Savings account: \$700.00

5 13. Income of Estate: That the alleged incapacitated/client has income
6 consisting of the following: \$1,341.00 received monthly from SSI.
7

8 14. Guardian of the estate and limited guardian of the person: That
9 pursuant to the recommendation of the Guardian ad Litem, Commencement Bay
10 Guardianship Services should be appointed as guardian of the estate and limited
11 guardian of the person of Joan H. Wright.
12

13 Commencement Bay Guardianship Services was organized to provide
14 protective management of the estate, assets and income of incapacitated, disabled
15 or handicapped persons.
16

17 15. Relatives: The names, addresses and relationship of persons most
18 closely related are:

19 Jeffrey Hendricks, son
20 38413 - 72nd Avenue East
21 Eatonville, WA 98328

22 Patricia Taylor, sister
23 533 West Davis
24 Exeter, CA 93221

25 ORDER APPOINTING GUARDIAN - 6

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1 16. Personal Decisions: Joan H. Wright is not capable of giving informed
2 consent and of making other personal decisions.

3 17. Needs of the Client: That Joan H. Wright is currently residing at
4 her son's home at 38413 - 72nd Avenue East in Eatonville, Pierce County,
5 Washington. To facilitate the needs of the client, the guardian should be
6 authorized to disburse the following:
7

- 8 a. Those sums reasonable and necessary for the payment of the client's
9 housing expenses;
- 10 b. A personal or incidental allowance as deemed appropriate by the
11 guardian;
- 12 c. A clothing allowance as deemed appropriate by the guardian;
- 13 d. A reasonable sum necessary for miscellaneous and necessary items that
14 appear to be reasonable and in the best interest of the client, without
15 further order of the Court;
- 16 e. Such other reasonable medical and dental expenses, including case
17 management services, which are incidental to this guardianship and not
18 covered by insurance.
- 19 f. Any legal fees and guardianship expenses and fees not to exceed
20 \$300.00 per month.

21 18. Limitation of Rights: That the client should have the following
22 rights:

- 23 a. to vote or hold an elected office;
- 24 b. to possess a license to drive, if allowed by the Department of
25 Licensing;

ORDER APPOINTING GUARDIAN - 7

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- c. to consent to or to refuse medical treatment;
- d. to decide who shall provide care and assistance;
- e. to make decisions regarding the social aspects of her life, such as where to live and with whom to socialize;
- f. to make or revoke a will

That the client should not have the following rights:

- a. to marry or divorce
- b. to enter into a contract;
- c. to appoint someone to act on her behalf;
- d. to sue or to be sued other than through a guardian;
- e. to buy, sell, own, mortgage, or lease property;
- f. to manage her own financial affairs.

II. CONCLUSIONS OF LAW

FROM THE FOREGOING FINDINGS OF FACT, the Court now makes and enters the following, Conclusions of Law:

1. That Joan H. Wright is an incapacitated/client person within the meaning of RCW 11.88, and a guardian of the estate and limited guardian of the person should be appointed;

2. That Commencement Bay Guardianship Services is qualified as required in RCW 11.88.020 to be appointed as Guardian of the estate and limited guardian of the person;

3. That the powers of the Guardian and the limitations and restrictions placed on the incapacitated/client person should be as set forth above;

ORDER APPOINTING GUARDIAN - 8

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1 NOW, THEREFORE, based upon the foregoing Findings of Fact, and
 2 Conclusions of Law, it is hereby ORDERED as follows:

3 1. Guardianship of the Person and Estate: That Commencement Bay
 4 Guardianship Services, be and is hereby appointed Guardian of the Estate and
 5 Limited Guardian of the Person of Joan H. Wright, throughout the lifetime of the
 6 client, or until further Order of the Court, and that the Letters of Guardianship
 7 be issued to Commencement Bay Guardianship Services, upon the filing of an Oath.
 8

9 2. Limitation of Rights: That the client should have the following
 10 rights:
 11

- 12 a. to vote or hold an elected office;
- 13 b. to possess a license to drive, if allowed by the Department of
 Licensing;
- 14 c. to consent to or to refuse medical treatment;
- 15 d. to decide who shall provide care and assistance;
- 16 e. to make decisions regarding the social aspects of her life, such as
 where to live and with whom to socialize;
- 17 f. to make or revoke a will.

18 That the client should not have the following rights:

- 19 a. to marry or divorce;
- 20 b. to enter into a contract;
- 21 c. to appoint someone to act on her behalf;
- 22 d. to sue or to be sued other than through a guardian;
- 23 e. to buy, sell, own, mortgage, or lease property;
- 24 f. to manage her own financial affairs.

25 ORDER APPOINTING GUARDIAN - 9

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1 3. Needs of the Client: That Joan H. Wright is currently residing at
2 her son's home in Eatonville, Pierce County, Washington. That the guardian should
3 be authorized to disburse the following:

- 4 a. Those sums reasonable and necessary for the payment of the client's
5 housing expenses;
- 6 b. A personal or incidental allowance as deemed appropriate by the
7 guardian;
- 8 c. A clothing allowance as deemed appropriate by the guardian;
- 9 d. A reasonable sum necessary for miscellaneous and necessary items that
10 appear to be reasonable and in the best interest of the client, without
11 further order of the Court;
- 12 e. Such other reasonable medical and dental expenses, including case
13 management services, which are incidental to this guardianship and not
14 covered by insurance.
- 15 f. Any legal fees and guardianship expenses and fees not to exceed
16 \$300.00 per month.

17 4. Management of the Estate: That the Guardian of the estate and
18 limited guardian of the person Commencement Bay Guardianship Services, be and is
19 hereby authorized upon qualification as Guardian and the issuance of Letters of
20 Guardianship to hereby undertake the management of the personal affairs,
21 including the diversion of mail from the client's home or residence or post office
22 box, and of the financial affairs of the client, including becoming representative
23
24

25 ORDER APPOINTING GUARDIAN - 10

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1 payee of the incapacitated/client Person's income, locating and gathering assets
 2 held in other accounts, to undertake the management of all assets, to set up a
 3 guardianship account or accounts, and proceed to expend funds as necessary for
 4 the benefit of the client, and such other reasonable duties required of a guardian.
 5

6 5. Incapacitated/client to Receive and Manage Income: That Joan H.
 7 Wright is incapacitated/client to receive and manage the client's income. That the
 8 guardian of the estate, Commencement Bay Guardianship Services, shall become
 9 representative payees for all of income, including Social Security. That the
 10 guardian of the estate, Commencement Bay Guardianship Services, shall convert all
 11 holdings, including savings accounts, safe deposit boxes, checking accounts, money
 12 market accounts, stocks, bonds, and any other income, into the name of said
 13 guardian of the estate for purposes of the guardianship.
 14
 15

16 6. LIMITED GUARDIAN OF PERSON

17 A. The power and authority to arrange for and to consent (if necessary) to
 18 any and all medical tests, examinations, medications, and treatments,
 19 including surgery, which are reasonably required and needed by the
 20 Client;
 21

22 B. The power and authority to consent to medical and dental treatment of
 23 the Client, if necessary, including surgery, except where contrary to law.
 24

25 ORDER APPOINTING GUARDIAN - 11

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1 C. The power and authority to authorize release of medical information on
2 behalf of the Client.

3 D. The power and authority to apply for an to secure an identification card
4 for the client.

5 E. The power and authority to assist the Client in obtaining employment.

6 F. The power and authority to assist the Client in obtaining housing.

7
8 The above list is not inclusive, but merely recites some of the
9 responsibilities and legal obligations of the guardian which cannot be superceded by
10 other individuals.

11 7. HIPAA RELEASE AUTHORITY

12 The Guardian shall be treated as JOAN H. WRIGHT would be treated with
13 respect to his/her rights regarding the use and disclosure of her individually
14 identifiable health information or other medical records. This release authority
15 applies to any information governed by the Health Insurance Portability and
16 Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164. This
17 order authorizes:
18
19
20

- 21 • Any physician, healthcare professional, dentist, health plan, hospital,
- 22 clinic, laboratory, pharmacy, or other covered health care provider, any
- 23 insurance company and the Medical Information Bureau Inc or other
- 24

25 ORDER APPOINTING GUARDIAN - 12

BALSAM McNALLEN LLP

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Tacoma Washington 98402

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1 health care clearinghouse that has provided treatment or services to
 2 JOAN H. WRIGHT or that has paid for or is seeking payment from
 3 JOAN H. WRIGHT for such services

- 4 • To give, disclose, and release to the guardian, without restriction,
- 5 • All of JOAN H. WRIGHT's individually identifiable health information
- 6 and medical records regarding any past, present, or future mental health
- 7 condition, to include all information relating to the diagnosis and
- 8 treatment of HIV/AIDS, sexually transmitted diseases, mental illness
- 9 and drug or alcohol abuse.

10 The authority given the guardian shall supercede any prior agreement that
 11 JOAN H. WRIGHT may have made with her health care providers to restrict
 12 access to or disclosure of her individually identifiable health information. The
 13 authority given the guardian has no expiration date and shall expire only in the
 14 event that the authority is revoked by court order and delivered to the health care
 15 provider.

16 8. GUARDIAN OF THE ESTATE

17 A. The power and authority to possess and manage the properties of the
 18 Client listed in the inventory to be filed herein and listed in any subsequent
 19 amendments or revisions to such inventory.

20 ORDER APPOINTING GUARDIAN - 13

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1 B. The power and authority to collect and to file suit on debts, rentals,
2 wages, and other claims due the Client.

3 C. The power and authority to contract and to incur other obligations in
4 the Client's behalf.

5 D. The power and authority to pay, compromise, and defend claims
6 against the Client, including paying debts of the Client in any amount.

7 E. The power and authority to apply for and to receive funds from
8 governmental sources for the Client, including, but not limited to:
9

10 a. Supplemental Security Income benefits (SSI)

11 b. HUD Section 8 Rent Subsidies

12 c. Childhood Disability Benefits under the Old-Age, Survivors, and
13 Disability Insurance Program

14 d. Aid to Families with Dependent Children

15 e. Social Security benefits

16 f. VA benefits of all kinds

17 g. Pensions of all kinds.

18 F. The power and authority to apply for and consent to governmental
19 services in the Client's behalf, including, but not limited to:
20

21 a. Vocational Rehabilitation Programs

22 ORDER APPOINTING GUARDIAN - 14

23 V:\Wright\IP-OrdApptGdn102505cb

24 BALSAM McNALLEN LLP

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1 b. Medicaid Services

2 c. Food Stamps

3 d. Title RR Services

4 e. VA benefits of all kinds

5
6 G. The power and authority to make application for, to consent to, and to
7 enroll the Client in private or public residential care facilities.

8 H. The power and authority to authorize release of information on behalf
9 of the Client.

10
11 I. The power and authority to apply for and to secure insurance on the
12 Client's behalf.

13 J. The power and authority to file a federal income tax return in the
14 Client's behalf.

15
16 K. The power and authority to rent real property in the Client's behalf to
17 meet the Client's housing needs.

18 L. The power and authority to assist the Client in obtaining an appropriate
19 education.

20
21 M. The power and authority to enter into and pay for all obligations and
22 purchases on the Client's behalf.

23
24
25 ORDER APPOINTING GUARDIAN - 15

V:\Wright\P-OrdApptGdn102505cb

BALSAM McNALLEN LLP
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

1 N. Written consent of the Guardian shall be required for all contractual
2 obligations, including, but not limited to, real estate contracts, leases, and
3 installment purchases, insurance and credit transactions.

4 O. The power and authority to consent to or to refuse placement of the
5 Client in any employment, training program, or voluntary occupational services
6 arranged by or through any public, private or governmental agency.

7 P. The power and authority to open and hold the contents of any safe
8 deposit box in the name, place and stead of the Client, particularly the safe deposit
9 box maintained by the Client.

10 The above list is not inclusive, but merely recites some of the
11 responsibilities and legal obligations of the guardian which cannot be superceded by
12 other individuals, including the client.

13 9. Bond: That no bond is initially required of the Guardian in this
14 matter, as the client's assets are less than \$3,000.00. However, there is a
15 potential for the receipt of monies as her dissolution action is resolved. In the
16 event that her total financial assets exceed \$20,000.00, the guardian should be
17 required to notify the court and set up a special needs trust, blocked accounts or
18 bond, as may be considered appropriate at the time.

19
20
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24
25 ORDER APPOINTING GUARDIAN - 16

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Attorneys at Law
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Tacoma Washington 98402
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1 10. Entry of Safe Deposit Box: That the Guardian be and hereby is
2 authorized to enter any and all safe deposit boxes held in the name of Joan H.
3 Wright. That upon entry the Guardian shall be authorized to maintain said safe
4 deposit box(es) or to remove any and all contents of said safe deposit box(es).
5

6 11. Interested Parties: That the following persons described in RCW
7 11.88.090(5)(d), shall received copies of further pleadings filed by the Guardian:
8 Jeffrey Hendricks and Patricia Taylor.
9

10 12. Inventory: That the Guardian of the estate shall make out and file
11 within three (3) months after their appointment, a verified Inventory of all the
12 property of the incapacitated person which shall come into their possession or
13 knowledge, including a statement of all encumbrances, liens, and other secured
14 charges on any item of property, a review hearing upon filing of the inventory
15 SHALL NOT be required.
16

17 13. Accounting: The Guardian shall file an Accounting every three years,
18 so long as no settlement involved amounts at or above \$20,000.00 should occur.
19 The Guardian shall notify the court of any substantial change in Ms. Wright's
20 financial circumstances, and annual accountings should be considered warranted at
21 that time.
22
23
24

25 ORDER APPOINTING GUARDIAN - 17

V:\Wright\IP-OrdApptGdn102505cb

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Tacoma Washington 98402
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1 14. Personal Care Plan: The Guardian shall file a Personal Care Plan within
2 three (3) months after this appointment.

3 15. In Home Care: That Joan H. Wright lives in her son's home and
4 requires assistance with the tasks of daily living. That the guardian can retain the
5 services of a caregiver to assist the Client with the needs of the client, and shall
6 pay said caregiver from guardianship funds/assets.
7

8 16. Costs and Fees: The fees incurred for attorney/guardian and
9 guardian ad litem fees shall be paid from the INCOME of the client's estate.
10

11 Guardian's Fee: The client receives Social Security income and
12 administratively, fees can be paid from those monies as an exception to policy and
13 living expenses will still be met.
14

15 a. That PEGGY FRAYCHNEAUD GROSS, attorney for the Petitioner herein,
16 has expended time in the capacity. A billing has been filed with the
17 Court. The Guardian should be authorized to pay those fees in the
amount of \$ 1,030.51;

18 b. That VIRGINIA R. FERGUSON, Guardian ad Litem herein, has expended
19 time in that capacity. A billing has been filed with the Court. The
20 Guardian should be authorized to pay those fees in the amount of
\$ 1,870²⁰;

21 17. Discharge of Guardian ad Litem: That VIRGINIA R. FERGUSON, the
22 Guardian ad Litem herein, be discharged from those duties upon entry of this
23
24

25 ORDER APPOINTING GUARDIAN - 18

V:\Wright\P-OrdApptGdn102505cb

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Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
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1 Order and that said Guardian ad Litem is hereby absolved of further duties or
2 obligations herein.

3 18. Term of Guardianship: The term of the guardianship shall continue in
4 effect until terminated pursuant to RCW 11.88.140.
5

6 19. Additional Litigation: The Guardian, Commencement Bay Guardianship
7 Services, is authorized to review all files and records related to Ms. Wright since
8 the time of her closed-head injury to determine whether there is any basis to
9 pursue legal remedies on behalf of Ms. Wright related to the settlement of her
10 insurance claim, her dissolution, or any other matter in which Ms. Wright's limited
11 capacities may have affected her ability to adequately act in her own best
12 interests.
13

14 20. Representation of Client in Litigation: The Guardian is granted
15 authority to represent Ms. Wright's interests in all litigation that is in effect or
16 may arise in the future.
17

18 21. Special Needs Trust: The Guardian, Commencement Bay
19 Guardianship Services, can petition for a Special Needs Trust when necessary
20 without further court order.
21

22 22. Remedies: The Guardian shall be authorized to pursue actions or
23 remedies in any venue available as may be deemed necessary and appropriate to
24

25 ORDER APPOINTING GUARDIAN - 19

V:\Wright\P-OrdAppt&dn102505cb

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Attorneys at Law
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Tacoma Washington 98402
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1 rectify or correct errors, omissions, or self-serving actions by those who have/had
 2 an obligation to protect Ms. Wright's interests.

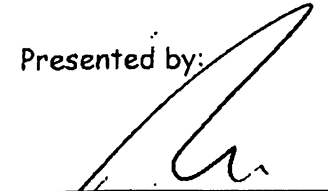
3 23. Substitution of judgment: The Guardian can substitute judgment as
 4 per the Gannon decision without further hearings on the matter. The pending
 5 dissolution action and appeal shall be managed and decisions made by the Guardian
 6 in conjunction with Mrs. Wright's chosen attorneys, Peggy Fraychineaud Gross and
 7 Richard Shepard.
 8

9
 10 DONE IN OPEN COURT this 31st day of October, 2005.

11
 12
 13 Presented by:


 14 JUDGE/COURT COMMISSIONER

Proten


15
 16 
 ROBIN H. BALSAM, WSBA #14001
 Attorney for Guardian

17 Approved by:

18
 19 
 20 VIRGINIA R. FERGUSON, WSBA #22551
 21 Guardian ad Litem

22
 23 
 24 PEGGY FRAYCHINEAUD GROSS, WSBA #14731
 Attorney for Petitioner

25 ORDER APPOINTING GUARDIAN - 20

FILED
 IN PIERCE COUNTY SUPERIOR COURT
 A.M. OCT 31 2005 P.M.
 PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY  DEPUTY

APPENDIX "B":

REPORT OF GUARDIAN AD LITEM WITH:

EXHIBIT A: MEDICAL/PSYCHOLOGICAL REPORT OF DR. WANWIG

**EXHIBIT B: SSI MEMORY ASSESSMENT REPORT OF DR. KATHARINE
BRZEZINSKI-STEIN**

**EXHIBIT C: REPORT OF NEUROPSYCHOLOGICAL EVALUATION OF
DR. LAURA DAHMER-WHITE**

EXHIBIT D: REPORT OF MARCIALYN McCARTHY, MAEd



05-4-01384-5 23931928 RTGAL 10-24-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT 21 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
DEPUTY

SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re the Guardianship of:) No. 05-4-01384-5
JOAN H. WRIGHT,) REPORT OF
An Alleged Incapacitated Person.) GUARDIAN AD LITEM

COMES NOW Virginia R. Ferguson, Guardian ad Litem for JOAN H. WRIGHT,
and reports to the Court as follows:

APPOINTMENT

I was appointed as the Guardian ad Litem in this matter on
September 21, 2005 and I submit this report pursuant to RCW 11.88.090.
I attest that I am free from influence from anyone interested in the
result of these proceedings, that I have the requisite knowledge,
training and expertise to perform the duties required of a Guardian ad
Litem by statute. There is a statement of my qualifications on file
with the Pierce County Superior Court, as required by statute. I
attest that I am on the Guardian ad Litem registry for Pierce County
and that I am qualified to serve as Guardian ad Litem in guardianship
proceedings.

ORIGINAL

CONFERENCE WITH ALLEGED INCAPACITATED PERSON

Background: In January, 2002, Joan Wright was in an automobile accident that left her with multiple bone fractures, and a closed head injury. Since that time, she has been evaluated by numerous physicians, neurological psychologists, and other treatment providers. She continues to have mental, emotional and physical problems that are documented by her treatment providers in numerous reports which have been reviewed by this Guardian ad Litem.

On October 5, 2005, I met with Joan Wright to review the Guardianship petition, and her personal history. Joan appeared on time and appropriately dressed for the interview. She was able to provide some details related to her medical condition, as well as the general issues related to her dissolution from her former husband, Robert Wright. Joan was able to clearly state that she has memory and retention problems, saying that she has to listen to information several times in order to comprehend what is said, and how to use information given to her. She indicated she does remember things better when she can read them, rather than just be told information orally.

Joan said she understood the role of a guardian to assist her in dealing with financial issues and her attempts to get her dissolution reviewed and perhaps overturned. In talking about her dissolution, she became quite emotional and distressed while explaining how the settlement conference was very confusing to her, and she did not understand what was going on. While discussing her marriage and the

1 events leading up to her dissolution, she became agitated and
2 disjointed in her presentation of events. It was difficult at times
3 to get her to focus on other topics.
4

5 Asked about her primary physician, Joan provided the names of at
6 least five different professionals with whom she currently has contact
7 regarding her physical and mental health problems. She is seeing or
8 is being followed by a Licensed Mental Health Counselor, a
9 neuropsychiatrist, a psychiatrist, a specialist in auditory processing
10 problems and a speech therapist, an eye specialist, a physical
11 therapist, and various others on an 'as-needed' basis. Joan described
12 herself as having "mental dyslexia" which she described as mixing up
13 words, transposing numbers, and generally not being able to
14 communicate effectively, especially when she gets upset. She
15 indicated she is running out of money, and her counselor is not
16 covered by her disability/SSI insurance; she worries about finding
17 another counselor that works with her as effectively. Some of her
18 other treatment providers appear to be covered by her Medicaid/SSI
19 disability status.
20
21

22 Joan reported that her income is \$1,341 in SSI, plus another \$80
23 which goes to pay her Medicare Part B premium. She also pays \$111.00
24 per month to Regence for Supplemental insurance, which does not
25 include drug or vision coverage. She tries to share expenses with her
26 son, with whom she lives. Her son has been off work due to an injury
27 covered by L & I, and he hopes to be working soon. Joan said she and
28 her son live in an old mobile home in Eatonville. She said she takes

1 a long time to take care of her daily needs, as she is awkward in her
2 movements, and she has fallen several times when she moves awkwardly
3 or leans over. One result of her accident in 2002 is the loss of the
4 senses of taste and smell, so she has to force herself to eat just to
5 maintain a minimal state of health. She now weighs about 100 pounds.
6 Joan described her trips outside the house as extremely difficult, as
7 she forgets what her errands are, sometimes has problems with double
8 vision and balance problems, and has difficulty communicating with
9 people. She said people have come up to her offering to help her in
10 the stores, because she looks as lost as she feels when attempting to
11 select items and make decisions.
12

13
14 Joan said she received a settlement of about \$100,000.00 in April
15 of 2002, just a few months after the accident. When she left her
16 husband, she took that money with her to a new bank account. She has
17 now used most of those funds for medical expenses, and to try and get
18 herself back to a position where she is employable. She said she had
19 worked in an accounting job before starting a catering business with
20 her husband many years ago, and had been the business person for the
21 catering, making all the arrangements and handling the books. She is
22 unable to handle such pressures now, and cannot remember details
23 sufficiently to allow her to do similar work now. At this time, Joan
24 said she is unable to handle routine tasks that require several steps,
25 such as cooking meals. Her limited mobility makes it difficult to do
26 housework, and her problems with communication have left her socially
27 isolated. She is being treated for depression and anxiety disorders.
28

REPORT FROM MEDICAL PROFESSIONALS

There are numerous reports available from several physicians and medical specialists regarding Joan's current medical and mental health status. Because she was scheduled to see J. Daniel Wanwig, M.D. the week after my interview with her, I asked Dr. Wanwig to provide the official medical report expected by the court. A copy of his report is attached hereto at Exhibit A, and incorporated by reference. The original has been filed separately. Dr. Wanwig is a specialist in psychiatry and internal medicine.

Dr. Wanwig identifies Joan Wright as having impaired memory functions, poor comprehension, impaired thinking and sentence formulation and depressed mood and energy. He indicated that her mental disorders are organic and unlikely to improve. Her depression may improve. He stated that Joan needs help in understanding legal papers, her medical diagnoses and therapies, and with her finances and money.

Other medical evaluations conducted since her accident in 2002 and reviewed by this Guardian ad Litem for their specific relevance to this investigation include:

- 1) An evaluation by **Katharine Brzezinski-Stein, Ph.D.** in August, 2002 for SSI purposes. While Joan scored in the average to low average range on several tests, she also scored in the 5th to the 15th percentile in several areas. Dr. Brzezinski-Stein reports that on the Train Making Tests "[W]hich assess central

1 processing and psychomotor speed . . . Ms. Wright's
2 performance was severely impaired on both of them." In
3 addition to making recommendations related to Joan's
4 adjustment problems and amnesic disorder, Dr. Brzezinski-
5 Stein indicated that Joan was having problems regarding
6 handling her finances, and suggested that a representative
7 payee should be identified if she qualified for SSI. Dr.
8 Brzezinski-Stein's report will be found at Exhibit B, attached
9 hereto and incorporated herein.
10

- 11 2) An evaluation by **Laura Dahmer-White, Ph.D.**, a clinical
12 neuropsychologist, based on a referral from Dr. Brzezinski-
13 Stein, in the fall of 2004. While Joan performed in the
14 average range on many tests of intellectual abilities, she
15 evidenced mild executive dysfunction, leading to poor
16 organizational skills, and mild difficulty with higher-level
17 problems solving. Dr. Dahmer-White recommended Joan receive
18 cognitive rehabilitation services to address her slowed
19 processing speed and issues with executive functioning.
20

21 Dr. Dahmer-White saw Joan again in July, 2005 and on
22 September 20, 2005. In July, she assessed Joan as having
23 deteriorated psychologically since the earlier assessment, and
24 strongly recommended that Joan resume her psychotherapy
25 sessions with her counselor, Lori Harrison. She also
26 recommended Joan seek medical treatment for her mood disorder
27 problems, and to follow through with speech therapy. In
28

1 September, Joan had begun to see Dr. Wanwig, and was
2 'considerably improved' in her mood, perhaps because of her
3 resumption of therapy and the use of Zoloft to address her
4 anxieties. Joan also reported to her that she had begun
5 speech therapy. No additional sessions with Dr. Dahmer-White
6 were scheduled. The three reports prepared by Dr. Dahmer-
7 White are attached hereto at Exhibit C, and incorporated
8 herein.
9

- 10 3) An evaluation by **Marcialyn McCarthy, MAEd**, a specialist in
11 Auditory Integration Training. Ms. McCarthy saw Joan in
12 January, 2005, and provided two written reports in response to
13 a referral by her then attorney, Deborah Josephson. On
14 January 5, 2005, Joan reported her major concerns to be
15 language processing problems, attentional problems, multi-
16 tasking problems, balance and vestibular-based problems,
17 auditory disturbances (tinnitus) and erratic sleep problems.
18 Ms. McCarthy identified Joan as having problems with an
19 assortment of auditory problems that are related to central
20 auditory processing disorders.
21
22

23 A second report by Ms. McCarthy was prepared on 25 January,
24 2005 regarding Joan's ability to understand and evaluate the
25 multiple aspects associated with a settlement conference for
26 her dissolution. Her assessment was that Joan experienced a
27 great deal of anxiety before and during the conference, which
28 exacerbated her auditory processing problems, compounded by

1 the stress of the situation and the difficulties Joan
2 experienced with understanding events in a group setting where
3 information is communicated in multiple forms and with many
4 nuances. Ms. McCarthy's assessment was that Joan did not have
5 a chance to understand what was being asked of her, and was
6 unable to comprehend the meaning of her act of signing papers.
7 The reports of Ms. McCarthy are found at Exhibit D, attached
8 hereto and incorporated herein.
9

10 COLLATERAL CONTACTS

11 In addition to interviewing Ms. Wright and reviewing her
12 extensive medical records, this Guardian ad Litem telephonically
13 interviewed **Lori Harrison**, a licensed mental health counselor and a
14 certified domestic violence treatment provider. Ms. Harrison has
15 served as Joan's psychotherapist since February, 2004. During this
16 period, she saw Joan less frequently than desired due to Joan's
17 financial problems, as Ms. Harrison is not paid by SSI/Medicaid funds.
18

19 Ms. Harrison said the initial referral for Joan came from her
20 attorney regarding Joan's emotional stability during the dissolution
21 action. Ms. Harrison quickly identified Joan's residual brain-injury
22 problems, especially as to her limited ability to respond to the
23 demands of the dissolution process.
24

25 After working with Joan for several months, Ms. Harrison
26 identified areas of particular difficulty for Joan as being her
27 inability to make sound decisions based on a reasonable analysis of
28 the long term consequences of the choices facing her. As an example,

1 Ms. Harrison related that Joan had paid for an extensive and expensive
2 training program, thinking that she could perhaps regain the ability
3 to achieve employment. Only after the money was gone did Joan come to
4 understand that the demands of the program were far beyond her ability
5 to process and retain information that was needed for the training.
6 Essentially, Joan had wasted a significant amount of money in a
7 program in which she does not have the capacity to effectively
8 participate.
9

10 Along with the cognitive limitations for complex information that
11 has brought Joan so much frustration, Ms. Harrison also worked with
12 Joan on her behaviors that at time come across as hostile, aggressive,
13 or even dysfunctional to the point of having people wonder if she was
14 either abusing alcohol or drugs. Joan denies the abuse of any
15 substances, but Ms. Harrison identified behaviors that are common to
16 brain-injured people, including a low tolerance for stress, pressured
17 speech when attempting to communicate, and withdrawal from complex
18 situations. Ms. Harrison said Joan has tried different medications to
19 address her anxieties, as well as such issues as thyroid problems,
20 that can contribute to these and other dysfunctional behaviors.
21

22 AS Joan's therapist and one of her primary sources of emotional
23 support, Ms. Harrison accompanied Joan to her home when she tried to
24 get a variety of possessions identified as hers in the dissolution
25 process. During this process, Ms. Harrison identified a number of
26 behaviors on the part of Joan's now-ex-husband that she considered
27 indicative of a relationship characterized by emotional and
28

1 psychological abuse. Ms. Harrison said she was deposed about her
2 observations, which she felt confident in describing as abusive, based
3 on her professional training as a certified domestic violence
4 counselor. She described Mr. Wright's refusal to allow Joan to enter
5 or even look in the door of various buildings, sheds, vehicles or
6 trailers on the property, and his refusal to allow Joan to take any
7 photos of the property. At one point, Ms. Harrison said she felt
8 compelled to confront Mr. Wright when it appeared to her that he was
9 going to physically restrain Joan or take her camera from her.
10

11 In addition to her own observations of the interactions between
12 Joan and Mr. Wright, Ms. Harrison indicated Joan had described to her
13 a number of situations during the marriage in which Mr. Wright appears
14 to have been emotionally or psychologically abusive. She said Joan
15 had reported that he had her sign a number of legal papers while she
16 was still in the hospital after her accident—papers that Joan was
17 unable to describe sufficiently to understand their full intent. Ms.
18 Harrison said her professional assessment, based on Joan's reports and
19 her own observations, is that Mr. Wright fits the profile of a
20 domestic violence perpetrator in his relationship to Joan. She also
21 expressed her opinion that Joan was under such distress at the time of
22 the settlement conference that she was functionally unable to
23 comprehend the process or to effectively assist her attorney on her
24 own behalf.
25
26
27
28

FINANCIAL MATTERS

Joan reported to this Guardian ad Litem that she maintains two

1 accounts at Key Bank. She opened these accounts in June, 2003, when
2 she separated from her husband. The bank reported that she had
3 initially deposited over \$111,000. This is consistent with Joan's
4 report that she took the balance of the insurance settlement from her
5 accident, and approximately one-half the joint account from the
6 marital community.
7

8 The bank manager reported that, as of October 19, Joan had a
9 balance of less than \$1,500 in her checking account, and approximately
10 \$700 in savings. The bank verified her SSI deposit of \$1,381 per
11 month. The bank manager also noted that Joan owes over \$7,000 on her
12 VISA account. The manager said there was a somewhat odd pattern of
13 withdrawals and deposits to the account, e.g. on the last day of
14 August, 2005, Joan withdrew \$500 in cash from an ATM near her home in
15 Eatonville, in the amounts of \$200, \$100, \$100, and \$100. A number of
16 "counter deposits" (money being deposited to the account at the bank
17 by a person) were identified.
18
19

20 CONFERENCE WITH PROPOSED GUARDIAN

21 I have spoken with the proposed guardian, Commencement Bay
22 Guardianship Services, in the person of Robin Balsam, and reviewed the
23 Declaration of Proposed Guardian filed with the court. Ms. Balsam and
24 her guardianship business is well known to this Guardian ad Litem, and
25 is highly qualified to assist Joan Wright in both her legal issues
26 related to her dissolution as well as her financial management issues.
27
28

DISCUSSION

The petition proposes a guardianship for the estate of Joan

1 Wright, and a limited guardianship of the person for purposes of
2 handling the complex legal issues related to her dissolution now being
3 addressed by her new attorneys both at the trial level and the Court
4 Of Appeals. Thus, Ms. Wright would retain the majority of her
5 personal rights, such as the right to vote, drive, determine her
6 social activities and retain the right to accept or refuse medical
7 treatment.
8

9 A review of the psychological evaluation records going back to
10 about six months after Joan's accident indicate that she was having
11 difficulty with complex tasks at that time, and a payee was
12 recommended by Dr. Brzezinski-Stein in her evaluation for SSI
13 benefits. These deficiencies were again documented by Dr. Dahmer-
14 White, and elaborated upon by the auditory integration specialist, Ms.
15 McCarthy. From the time Joan separated from her husband in June, 2003
16 to the present, Joan has used over \$150,000 (what she took from the
17 marital community and plus she has received from SSI). Without a
18 month-by-month review of her bank records, there is no way of knowing
19 how much of this money went to various financial needs, such as
20 medical costs not covered by SSI, counseling--also not covered by SSI--
21 with Ms. Harrison, attorney's fees, and living expenses. It appears
22 that Joan has gone through a lot of money with little in the way of
23 possessions or improvements to her life to show for it. She continues
24 to live with her son in an old mobile home near Eatonville, and has
25 not always followed through with recommended treatments for her
26 residual mental and physical problems in a timely manner. Regardless
27
28

1 of what she did with the money, her financial resources are
2 essentially gone at this point.

3 In a review of the dissolution file, it appears that a settlement
4 conference was conducted either in December, 2004 or early January,
5 2005, and final papers were entered on January 7, 2005. On January
6 26, Joan filed 200 pages of declaration and attachments seeking to
7 have the dissolution overturned. About a week later, a notice of
8 appeal was entered. The entry of final orders, and Joan's request to
9 reopen the dissolution action almost exactly coincide with the
10 materials from the auditory integration specialist on January 5 and
11 25. Reading the many medical reports available, it is difficult for
12 this investigator to understand how the legal matter was resolved
13 without making sure that Joan had sufficient time to understand and
14 weigh what was being asked of her in the high-stress environment of a
15 settlement conference. Further, the issues raised in this post-
16 dissolution declaration appear to be issues that should have been
17 addressed by Joan through her attorney prior to settlement of the
18 case. The efficacy of her representation must be questioned in light
19 of the total picture presented by Joan's allegations as well as her
20 medical, emotional and psychological history.

21 Other issues come to mind for this investigator when looking at
22 the entire record related to Joan. For example, Joan reported that
23 the insurance claim from the accident was settled in April or May,
24 2002, within just a few months of her injury, when her husband brought
25 her papers to sign from her insurance company—State Farm—(apparently

1 the other driver was uninsured). She stated that she never spoke to
2 anyone about the settlement other than her husband. I do not have
3 access to the records from that period and the settlement process, but
4 if Joan's summary of these acts is accurate, it appears that Joan was
5 not adequately assessed as to the pervasive nature of her impairments,
6 and her long-term needs were not identified until well after this
7 point. If, in fact, Joan suffered than from the same sorts of mental
8 processing problems she demonstrates today, she probably was not
9 competent to settle her claim at that time.
10

11 Further, one has to wonder what role the relationship she had
12 with her husband played in Joan's failure to follow through on
13 treatment recommendations and therapy programs, as well as her
14 problems during the dissolution action. If, as her counselor has
15 suggested, the relationship was characterized by a pattern of
16 emotional and psychological abuse, which may have worsened after Joan
17 lost the business abilities that made her an asset to her husband and
18 the family business, Joan may have not been in a position to challenge
19 her husband effectively, especially if her attorney was less than
20 zealous in researching the claims Joan made.
21
22

23 RECOMMENDATIONS

24 INCAPACITY: Joan Wright is incapacitated within the meaning of
25 RCW 11.88.010. She cannot understand or comprehend the nature of the
26 decisions facing her necessary to safeguard whatever financial estate
27 she currently has, nor effectively assist counsel in dealing with the
28 multiple issues related to her attempt to set aside her dissolution

1 settlement without considerable difficulty and assistance. It appears
2 to this investigator that her cognitive processing difficulties for
3 complex or highly stressful matters can be traced back substantially
4 to the after-effects of her closed head injury in January, 2002.

5 RECOMMENDATION FOR GUARDIAN: Commencement Bay Guardianship, in
6 the person of Robin Balsam and such members of her staff as she
7 determines are appropriate, should be identified by the court as
8 guardian for Joan Wright.
9

10 RIGHTS TO BE RETAINED BY MS. WRIGHT: Joan Wright should retain
11 the right to vote, to make decisions regarding her social life, such
12 as where to live and with whom to socialize, to maintain her driver's
13 license so long as she is determined to be qualified to drive by the
14 WA. Department of Motor Vehicles, to consent to or refuse medical
15 treatment, to decide who shall provide care and assistance to her in
16 her daily life and as treatment providers, and to make or revoke a
17 will.
18

19 RIGHTS AND RESPONSIBILITIES OF THE GUARDIAN: The guardian for
20 Ms. Wright should have the authority to act on Ms. Wright's behalf
21 and/or exercise substituted judgment pursuant to the "Gannon" case in
22 the following areas: to marry or divorce, to enter into contracts; to
23 manage Ms. Wright's financial affairs, including establishing a
24 Special Needs Trust as appropriate; to sue or be sued on behalf of Ms.
25 Wright, to buy, sell or lease property, and to represent Ms. Wright in
26 all litigation now in effect or which may arise in the future.
27
28

In addition, the guardian for Joan Wright should be authorized to

1 review all files and records related to Ms. Wright since the time of
2 her closed-head injury to determine whether there is any basis to
3 pursue legal remedies on behalf of Ms. Wright related to the
4 settlement of her insurance claim, her dissolution, or any other
5 matter in which Ms. Wright's limited capacities may have affected her
6 ability to adequately act in her own best interests. The guardian
7 should be authorized to pursue actions or remedies in any venue
8 available as may be deemed necessary and appropriate to rectify or
9 correct errors, omissions or self-serving actions by those who
10 have/had an obligation to protect her interests.
11

12
13 EXTENT OF GUARDIANSHIP: A limited guardianship of the person and
14 a full guardianship of the estate is recommended for the duration of
15 Joan Wright's life as the least restrictive alternative available.
16 Should Ms. Wright's mental status improve significantly, the extent of
17 the guardianship may be reviewed by the court.
18

19 AGREEMENT TO GUARDIANSHIP

20 Joan Wright has specifically expressed agreement with the
21 appointment of a guardian, and has filed a declaration to that effect
22 with the court. In discussing the various issues she faces, she
23 agreed that her guardian should have the authority to exercise
24 substituted judgment on her behalf regarding the dissolution action
25 and her attempts to have the final orders therein set aside.
26
27
28

PERSONS TO RECEIVE SPECIAL NOTICE

The following individuals should be advised of legal proceedings related to this guardianship:

Jeffrey Hendricks (son)
38413 72nd Ave. E.
Eatonville, WA 98328

Patricia Taylor (sister)
533 W. Davis
Exeter, CA 93221

BOND AND ANNUAL REPORTS:

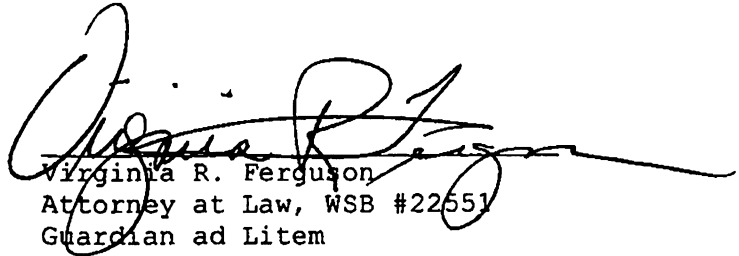
Currently, Joan Wright has less than \$3,000 in combines savings and checking. Her monthly income is less than \$1,500 per month. Therefore no bond is recommended. However, there is a potential for the receipt of monies as the details of her dissolution are resolved. In the event that her total financial assets exceed \$20,000, the guardian should be required to notify the court and set up special needs trusts, blocked accounts or bonds, as may be considered appropriate at that time.

So long as there is no settlement involving amounts at or above the levels indicated above, tri-annual accountings are recommended. The guardian should be required to notify the court of any substantial change in Ms. Wright's financial circumstances, and annual accountings should be considered as warranted at that time.

PRESENCE OF ALLEGED INCAPACITATED PERSON AT HEARING:

I recommend that Joan Wright attend the hearing now scheduled for October 31, 2005 at 1:30 PM.

1
2 Done this 21st day of October, 2005.
3
4

5 
6 Virginia R. Ferguson
7 Attorney at Law, WSB #22551
8 Guardian ad Litem
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PIERCE COUNTY No. 05-4-01384-5

EXHIBIT A

In Re the Guardianship of:)	No. 05-4-01384-5
)	
JOAN H. WRIGHT,)	MEDICAL/PSYCHOLOGICAL
)	REPORT
An Alleged Incapacitated Person.)	RCW 11.86.045

(A report completed by dictation/transcription is also acceptable.)

- practice since 1978

Virginia R. Ferguson
P.O. Box 7027
Tacoma, WA 98406
253-756-5771
vrferguson@harbornet.com

COPY

IV. The following are the dates on which the patient was examined, including the most recent examination:

9/12/05

9/26/05

10/10/05

V. The following is a summary of the relevant medical, functional, neurological, psychological, or psychiatric history of this patient as known to me:

Impaired memory for time span over 24 hrs

Comprehension is poor

Thinking + forming sentences is impaired

Mood and energy are low

VI. The following are my findings, diagnosis and prognosis as to the medical/psychological condition of this patient:

Alzheimer Mental Disorder - not expected to improve

Depression - may improve

VII. This patient is currently on the following medications:

Zoltr 25 mg - per day
to be adjusted

VIII. The effect these current medications have on this patient's ability to understand or participate in these guardianship proceedings is:

None

IX. The following are my opinions on the specific assistance this patient needs (Please address whether or not this patient can make

his/her own living and medical decisions, what the patient's ability is to handle his/her own finances and money, and whether or not there are specific areas in which this patient requires help with personal matters or financial matters):

Needs help in understanding - "legal papers" medical D+ and tx finances + money

X. I have also met or spoken with the following individuals regarding this patient:

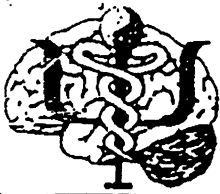
(Please attach additional pages as necessary.)

DATE FORM SIGNED: 10/10/05

[Signature]
EXAMINING PHYSICIAN/PSYCHOLOGIST

PIERCE COUNTY No. 05-4-01384-5

EXHIBIT B



Advanced Behavioral Medicine
and
Neuropsychology Associates, PLLC

2013 South 19th Street
Tacoma, WA 98405
(253) 383-3355
FAX(253) 383-3627

Edwin L. Hill, Ph.D.
Donna M. Lidren, Ph.D.
Katharine Brzezinski-Stein, Ph.D.
Ellen A. Begley, Ph.D.

SSI Memory Assessment Report

Patient: Joan H. Wright
S.S.N.: 558-62-9861
DOB: 9/18/45

Date of Evaluation: 8/15/02

Tests Administered: Wechsler Memory Scale III (WMS III), Trail Making Tests A and B.

Reason for Referral: Joan Wright is a 56-year-old right-handed female with 12+ completed years of education. She has a history of premature birth, Graves disease, failed cornea transplant, hypertension, orthopedic and internal injuries, and traumatic brain injury with loss of consciousness and subsequent headaches and tinnitus. Referral was made for a memory assessment by the Division of Disability Determination Services. The purpose of the assessment was to assist in the determination of her eligibility to receive Social Security benefits.

Chief Complaint: When asked why she felt unable to sustain full time competitive employment, Ms. Wright replied "Because the work I do is so physical and it needs a lot of memory work and the business my husband and I have requires memory and it goes 24 hours a day. I can't load the trucks like I did. I try to help him on the phone and I can't keep stuff straight."

Pertinent Background Information: Ms. Wright was born in Los Angeles, California. She never knew her biological father but formed a close attachment with her mother. Her mother remarried when Ms. Wright was 5 years old but she did not form a close bond with her stepfather who was described as being physically abusive. She had a younger half-sister with whom she was closely bonded, as well as two stepbrothers. She and her step-siblings did not form close attachments. No other types of abuse took place during the course of her childhood.

In 1963, Ms. Wright graduated from Baldwin Park High School in Baldwin, California. She received no special education during the course of her formal schooling.

Subsequent to her graduation, Ms. Wright married and gave birth to a son. They were closely bonded. She divorced her husband four years later because his military service frequently made him absent from their home. Ms. Wright remarried in 1968 and moved to Oregon shortly afterwards. No children were born in this union. Ms. Wright was employed as an accountant at International Harvester for 15 years. She divorced her husband in 1980, whom she described as a "professional student who wouldn't work." Ms. Wright remarried a third time later that year. This marriage was described as being good.

Joan Wright
Page 2

In 1984 or 1985, Ms. Wright moved to Washington with her husband to expand their catering business. She continued in this business until January 2002 motor vehicle accident.

Medical/Psychiatric History: Ms. Wright was born prematurely due to her mother's having developed toxicemia. In 1963, she underwent a failed left cornea transplant. Ms. Wright received a tonsillectomy in 1967. In 1971 or 1972, she was diagnosed with Graves disease which was treated with radiation. She received a tubal ligation in 1973. Ms. Wright was diagnosed with hypertension in 1999. In January 2000, she was in a serious motor vehicle accident in which she sustained a traumatic brain injury with loss of consciousness, along with bilateral hip fractures, a punctured lung, pelvic and rib fractures, and a bladder injury. She was hospitalized more than a month. Ms. Wright complained of tinnitus and headaches since this accident.

No history of mental health treatment was reported. Ms. Wright likewise stated that she had no history of drug or alcohol abuse. At the time of her evaluation, her medications included a thyroid replacement, Norvasc 5mg, oxybutynin 5mg, and various samples of pain medication.

Mental Status Examination: Ms. Wright appeared promptly for her evaluation. Her grooming and hygiene were quite good. She was casually and appropriately dressed for the weather in a short sleeve pullover and blue jeans. No psychomotor agitation or retardation were noted. However, Ms. Wright walked with a stiff gait and required the use of the elevator in order to access this examiner's second story office. She also spoke with a slight slur.

Throughout her evaluation, Ms. Wright was as open and cooperative with this examiner as her abilities would allow. No indication of malingering or factitious behavior was evident.

When asked to describe her primary mood, Ms. Wright replied, "I'm a pretty positive, upbeat person, but I do get down. I find when I'm by myself and get frustrated, I curse a lot. I have no patience. I used to have the patience of Job." Her affect during the evaluation was dysphoric.

Decreased appetite was reported to the extent that Ms. Wright no longer experienced hunger. As a result, she forced herself to eat. Her brain injury affected both her sense of taste and smell. Ms. Wright additionally complained of nightly sleep onset difficulties with multiple nighttime awakening due to anxiety. She had occasional difficulty regaining sleep. As a result, she fatigued by 10 a.m. and required naps during the course of the day.

Thoughts were reasonably clear, but stream of mental activity was somewhat tangential. No manifestations of hallucinations, delusions or other psychotic processes were evident in her speech and behavior or by report. Although she admitted to experiencing past suicidal ideation, she had no history of intent or actual attempt. Ms. Wright stated that she had no history of violent/assaultive behavior.

Ms. Wright was oriented to person, but was one day off on the date and could not name the site of her evaluation. However, she was aware that

Joan Wright
Page 3

it was taking place in Tacoma. Remote memory functions were poor for the information fair for past dates and life events. Attention/concentration and other memory functions will be discussed in the test results section of this report. No responsibility can be accepted for the release of this information to any other person. INCLUD.

Fund of knowledge was limited. Ms. Wright correctly identified the current U.S. president, vice president and Washington State governor. When asked to described a recent news events, she simply replied "kidnapping in California", but she would offer no further details. She listed Oregon, Idaho, Canada, the Pacific Ocean, and "maybe one of those states around Idaho" as being those which border Washington.

Practical judgement was limited. When asked what she would do if she were the first to see flames in a crowded theater, Ms. Wright replied, "Leave, get help, 911." Proverb interpretation, however, was reasonably abstract. When asked to give the meaning of the saying "Don't cry over spilt milk" Ms. Wright replied "When something's already happened, don't agonize about it. You can't change it." Insight into her current life circumstances appeared to be adequate.

Functional Assessment: At the time of her evaluation, Ms. Wright was living with her husband. She restricted her driving to the grocery store and post office. When asked about activities of basic self-care, she reported having difficulty bending to keep her feet clean. This was due to pain in her pelvis and lower back. She could cook, but stated that she sometimes forgets what she is doing and can no longer follow complex recipes. Her husband performed most of the family grocery shopping. Ms. Wright stated that she cannot reach high or low items on store shelves. If she had to use the bathroom before shopping, she sometimes forgot why she went to the store and would leave. She also would occasionally become panicky when she forgot what she was doing. Ms. Wright could sweep small areas but could no longer maneuver a mop or a vacuum cleaner. She could dust midrange items and could scrub a sink, but not a bathtub. She could also do dishes and laundry. Her husband performed the household money management. Ms. Wright stated that the traumatic brain injury affected her penmanship, that she has made transposition errors and has also signed her maiden name on checks since the time of her accident.

Social functioning appeared to be limited. Ms. Wright maintained a few friendships with former coworkers, but had no regular contact with them. She did not attend church or any other event on an ongoing basis. As such, her lifestyle appeared to be isolated.

Disturbance of concentration, persistence and pace was reported. Ms. Wright complained of difficulty sustaining concentration when reading and watching television. Distractibility also interfered with task persistence and completion, "I can get sidetracked at the least little thing." Work pace was described as being slow relative to age mates.

Deterioration in a work-like setting was reported post traumatic brain injury. "I wasn't handling anything well," Ms. Wright found both the physical and mental demands of her business to be overwhelming.

Test Results: The psychometrist who administered the testing commented that Ms. Wright remained alert and cooperative throughout this aspect of

Joan Wright
Page 4

her evaluation. Although she required episodic instructions, she put forth good levels of effort. results are considered to be valid indicators of her current functioning.

Memory testing with the WMS-III yielded a working memory index of 91. This value falls in the average range and is probably consistent with premorbid levels of functioning. Working memory is a complex of high level attentional skills which allow a person to attend to information, to hold and process it in memory, and to formulate responses based on it. Her performance placed her at the 27th percentile of her age group.

Ms. Wright earned an auditory immediate index of 97 which is in the average range. She retained 22 of 50 details from two short stories presented orally. When the second story was repeated, however, she gained only one additional details. Ms. Wright mastered 4 word pairs at the end of 3 trials. The presence of a distractor list affected her performance in that she had mastered 5 pairs before its presentation. This performance placed her at the 42nd percentile.

In contrast, a visual immediate index of 75 was produced, which is in the borderline range. Ms. Wright earned 30 of a possible 48 points on a faces recognition task. However, she earned only 23 of a possible 64 points on another task which required the recall of characters, activities and locations from a set of family pictures. This placed her only at the 5th percentile.

Ms. Wright generated an immediate memory index of 84, which is in the low average range and placed her at the 14th percentile. This is a composite of the immediate auditory and visual indices. As such, it represents a more global measure of immediate memory. The 22 point disparity between the two is quite significant and is indicative of moderate left cerebral hemisphere compromise.

An auditory delayed index of 94 was earned which is in the average range. After an approximate 30 minute delay, Ms. Wright retained only 17 of the 23 initially registered details from the short stories and recalled 4 of the 8 word pairs. This placed her at the 34th percentile.

Ms. Wright produced a visual delayed index of 78, which is in the borderline range. After approximately 30 minutes, she gained 3 points on the faces recognition task, but lost 9 points on the family pictures. This placed her at the 7th percentile.

Information retrieval based on recognition is often easier than that which is based on free recall. This did not prove to be the case for Ms. Wright. She earned an auditory recognition delayed index of 80. This falls in the low average range and is significantly beneath her auditory delayed index. It suggests that virtually all newly learned information can be accessed through free unaided recall alone. This placed her at the 9th percentile.

Ms. Wright produced a general memory index of 82 which is in the low average range and placed her at the 12th percentile. This is a composite of the delayed auditory and visual indices which includes both recognition and recall features. It thereby represents a more global

CONFIDENTIAL
These records are strictly confidential and are for the information only of the person/agency to whom it is referred. The person/agency receiving these records agrees to keep the information confidential and assumes the liability for any disclosure. No responsibility can be accepted if it is made available to any other person. INCLUSION OF THE PATIENT'S NAME IS NOT NECESSARY.
Neuropsychology, Behavioral Medicine and Psychiatry

Joan Wright
Page 5

measure of delayed memory. The 16 point disparity between the two again significant and is suggestive of moderate left cerebral hemisphere compromise.

The Trail Making tests were also administered which assess central processing and psychomotor speed. Ms. Wright's performance was severely impaired on both of them.

Diagnosis: On the basis of history, clinical observation, and test data, the following DSM-IV diagnosis is offered.

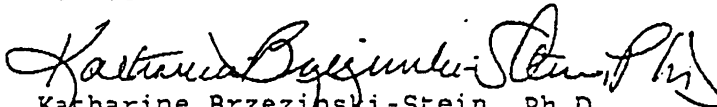
Axis I	294.0	Amnestic disorder due to traumatic brain injury
	309.0	Adjustment disorder with depressed mood
Axis II	799.9	Deferred
Axis III		Status post Graves disease, hypertension, traumatic brain injury, orthopedic injuries, headaches, tinnitus
Axis IV		Limited social support, unemployment
Axis V		GAF 52

Prognosis: Ms. Wright's current prognosis for return to full time competitive employment is considered to be guarded. Her adjustment disorder is going untreated and is no doubt complicating and exacerbating her amnestic disorder. It is therefore recommended that she be referred to a psychiatric consultation for medication evaluation along with concurrent outpatient psychotherapy to diminish symptoms of depression and anxiety, to learn compensation strategies for memory loss, to increase realistic self-confidence and to enhance self-esteem.

Capability to Manage Funds: By her own admission, Ms. Wright is no longer capable of engaging in activities of responsible financial planning and management despite her many years as an accountant. It is therefore recommended that she be appointed a payee should she qualify for Social Security Benefits.

Medical Source Statement: Despite her impairments, Ms. Wright exhibited reasonably good sustained attention and immediate/delayed auditory memory. Verbal reasoning was relatively adequate. Common courtesy and basic manners were intact. Ms. Wright also presented a good appearance from the standpoint of grooming and hygiene.

Thank you for the opportunity to evaluate this interesting woman. This examiner will be available for questions or for additional consultation as needed.


Katharine Brzezinski-Stein, Ph.D.
Licensed Psychologist (#1553)

KBS:cm

These records are strictly CONFIDENTIAL and are for the use of the person/agency to whom it is addressed. I, _____, receiving these records agree to keep them CONFIDENTIAL and assume the liability for failure to do so. No responsibility can be accepted if it is made available to any other person, including the patient.

PIERCE COUNTY No. 05-4-01384-5

EXHIBIT C



Laura Dahmer-White, Ph.D.
Clinical Neuropsychology

REPORT OF NEUROPSYCHOLOGICAL EVALUATION

PATIENT NAME: JOAN WRIGHT

DOB: 09-18-45

AGE AT TIME OF EVALUATION: 59

HANDEDNESS: RIGHT

EDUCATION: 14

OCCUPATION: UNEMPLOYED

PSYCHOMETRIST: LORI JOHNSON, BA

DATE OF EVALUATION: 09-22-04; 10-13-04; 11-04-04

REFERRAL SOURCE: KATHERINE BRZEZINSKI-STEIN, PH.D.

IDENTIFYING AND REFERRAL INFORMATION: Joan Wright is a 59-year-old, right-handed Caucasian female who was involved in a serious motor vehicle accident on 01-16-02, in which she sustained multiple system injuries, including a probable traumatic brain injury. She underwent a psychological assessment, performed by Dr. Katherine Brzezinski-Stein, a psychologist in Tacoma, on 08-15-02 for the purpose of Social Security disability evaluation. Dr. Brzezinski-Stein referred the patient to this author for neuropsychological evaluation and treatment services.

PERTINENT HISTORY: The following information was obtained from review of available medical records, including records from Tacoma General Hospital, Good Samaritan Hospital and Dr. Brzezinski-Stein, and from an interview with the patient and her son.

On 01-16-02, Ms. Wright was the restrained driver of a vehicle that was T-boned by another vehicle. Apparently, the airbag deployed. She experienced a positive loss of consciousness of unknown duration. In reviewing records from Good Samaritan Hospital, it is noted that the patient did not have any retrograde amnesia as she was able to recall moments prior to the accident. However, she was amnesic for the accident itself. When interviewed, Ms. Wright reported no memory of the scene of the accident. She recalls her rehabilitation stay at Good Samaritan Hospital but reported no clear memory of Tacoma General Hospital. She was transported via ambulance to Good Samaritan Hospital and subsequently transferred to Tacoma General Hospital for further trauma care. She was diagnosed with multiple rib fractures on the left and had a small left hemopneumothorax. She had superior and inferior pubic rami fractures and a minimally displaced left acetabular and zone 2 right sacral fracture. Head CT scan revealed old bilateral small strokes with paraventricular white matter changes, but no acute abnormality.

**RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 2**

The patient was hospitalized at Tacoma General through 01-23-02 when she was then transferred to Good Samaritan Hospital for inpatient rehabilitation services under the care of Maria Reyes, M.D. In reviewing Dr. Reyes' History & Physical report, it is noted that her fractures were treated non-operatively and that she was initially nonweightbearing. However at admission, she was weightbearing as tolerated on both her lower extremities. At the time of her admission, she was complaining of pain, intermittent numbness in the left hand and the great and second toes, urgency and dysuria. She also complained of memory loss with right ear tinnitus. Dr. Reyes' physical examination was notable for a left-sided ptosis with mildly disconjugate gaze. She was diagnosed with multiple trauma to include the fractures listed above. She was also diagnosed with hypertension; hypothyroidism; anemia due to blood loss; postconcussive syndrome; rule out left lumbosacral plexopathy and left upper extremity peripheral nerve entrapment; rule out urinary tract infection and neurogenic bowel and bladder; prior left-sided ptosis with disconjugate gaze and blindness in the left eye.

Ms. Wright received rehabilitation services from 01-23-02 through 02-02-02. By discharge, the patient was walking independently over 300 feet with a front-wheeled walker. She was generally independent in basic ADLs and was able to complete simple meal preparation and light housekeeping. It was felt she would need assistance with heavier housekeeping tasks. Dr. Reyes noted that her cognition was positive for delay in processing and diminished higher-level executive function and memory. Dr. Reyes speculated that most of this was premorbid but she felt that the patient would benefit from outpatient occupational and speech therapy services.

Ms. Wright was seen for a SSDI psychological evaluation on 08-15-02 by Katherine Brzezinski-Stein, Ph.D. Dr. Brzezinski-Stein noted that she had a history of premature birth, Grave's disease, failed cornea transplant, hypertension, orthopedic and internal injuries and traumatic brain injury with loss of consciousness and subsequent headaches and tinnitus. As a part of her evaluation, Dr. Brzezinski-Stein administered some cognitive testing. Ms. Wright showed evidence of problems with verbal learning abilities, with a fairly big discrepancy between her Auditory and Visual Immediate Index scores on the WMS-III. Delayed recall fell at the 12th percentile, with again a fairly big discrepancy between verbal and visual memory. Dr. Brzezinski-Stein also noted that the patient's performance on the Trail Making Test was severely impaired on both Parts A and Part B. She diagnosed amnesic disorder due to traumatic brain injury and adjustment disorder with depressed mood. Dr. Brzezinski-Stein stated that the patient's prognosis for return to full-time competitive employment was guarded. She recommended that the patient receive psychiatric evaluation as well as outpatient psychotherapy. She also recommended that the patient learn compensatory strategies for her memory difficulties. Dr. Brzezinski-Stein also stated, "By her own admission, Ms. Wright is no longer capable of engaging in activities of responsible financial planning and management despite her many years as an accountant. It is therefore recommended that she be appointed a payee should she qualify for Social Security benefits."

RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 3

PRESENTING COMPLAINTS: Upon interview, Ms. Wright reported some fairly significant physical and orthopedic problems which she attributes to the motor vehicle accident that occurred in January 2002. She reported persistent problems with her right hip which she described as painful. She was also observed to have a somewhat unusual gait. She has had problems with dizziness and vertigo since the accident and stated, "Sometimes even when laying down I feel like I'm falling." She also reported generally low energy and endurance. The patient is blind in the left eye from birth but reports good vision in her right eye. She reports some problems with hearing in her left ear and describes "a rushing water sound." Ms. Wright also reported some continued problems with bladder urgency. She reported persistent numbness in her fingertips and her toes. She reported that this began immediately following the motor vehicle accident. She continues to experience headaches three to four times a week, located primarily on the right side of her head. Average pain rating of her headaches is 8 on a 10-point pain scale. She reports some associated nausea with the headaches but no vomiting.

From a cognitive standpoint, she described significant problems with mental sequencing and described herself as "mentally dyslexic." She reported awareness of slowed cognitive processing. She complained of slowed and sometimes slurred speech since her accident. This was observed during the evaluation. She reported mild problems with sustained attention. She reported subjective difficulty with multi-tasking. She stated that she has returned to driving and cooking but describes herself as being slow at cooking. She also reported problems with memory. She stated that she has difficulty remembering auditory information. She stated that she used Post-It notes and yellow tablets as well as a wall calendar to compensate for her memory issues. In addition to her occasionally slurred speech, Ms. Wright reports that she, at times, has word-finding problems and has word substitutions. She generally denied problems with reading comprehension but did describe difficulties with reading retention. She generally denied problems with visual-spatial abilities. When questioned about executive functioning, Ms. Wright reported some mild decrease in organization and trouble with follow through on tasks. She stated that she becomes easily sidetracked.

Ms. Wright also complains of problems with depression and anxiety. More information about her psychological status will be presented in the Test Results section below.

CURRENT MEDICATIONS: Medications at the time of evaluation included Thyroid; Norvasc; Butalbital (p.r.n. for headache).

PAST MEDICAL HISTORY: The patient's past medical history is significant for Grave's disease and hypertension. She denied any previous head traumas with loss of consciousness or alteration of mental status, other than the accident that occurred in January 2002. Surgeries have included cosmetic eye surgery when she was in high school. She also had a tonsillectomy and a tubal ligation.

RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 4

PSYCHIATRIC HISTORY: The patient denied any history of inpatient psychiatric services. She is currently receiving outpatient psychotherapy services from Lori Harrison, a mental health counselor in Tacoma. Ms. Wright is in the process of a divorce and noted that this has been very stressful for her. She stated that she was very depressed one year ago and was prescribed antidepressant medication. She most recently took Lexapro but discontinued the medication on 08-20-04. The patient denied any past history of suicide attempts. She reported positive history of physical abuse during childhood as well as sexual abuse from the ages of six through eleven. Family history of psychiatric disturbance is denied.

SUBSTANCE ABUSE: Ms. Wright currently smokes one pack of cigarettes per day. She stated that she quit smoking for 12 years, from the ages of 19 to 32. She also quit for a period of time more recently but started again about a year ago. She denied any regular use of caffeine. Current alcohol use is estimated to be two to three drinks per day but with further questioning she stated that she does not drink every day. She noted that she has been drinking more in the last few months. She denied any current use of other psychoactive or illicit substances. She denied any past heavier use of alcohol.

SOCIAL HISTORY: Ms. Wright currently lives in Eatonville, Washington with her son, Jeffrey. She is in the process of divorce after 23 years of marriage. She has had three marriages – the first of four years' duration, the second of 12 and the third of 23. She described her husband as verbally abusive. Ms. Wright was the only child born to her biological parents. She has a half-sister who lives in California. She stated that she and her sister had a close relationship until her husband sent her mother there to live. Currently, her mother is 82 years old and lives in an assisted living facility in Tacoma. She has dementia. Ms. Wright was born in Los Angeles, California and never knew her biological father. Her mother remarried when Ms. Wright was five years. Joan suffered physical and sexual abuse at the hands of her stepfather.

Ms. Wright graduated from high school and described herself as a straight-A student throughout school. She described herself as an overachiever. She noted that her high school GPA was 3.99. She attended Portland Community College where she studied accounting. She denied any history of special education services and never repeated a grade.

Ms. Wright owned and operated her own catering business, which she described as an open pit barbeque, for approximately 20 years. She and her husband co-owned the business. She noted that she worked more than full time hours and did all aspects of the business, including securing clients, planning meals, entertainment, transportation and decorations. Prior to her work in catering, Ms. Wright worked for 16 years for International Harvester as a regional accountant.

RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 5

EVALUATION PROCEDURES:

Wechsler Adult Intelligence Scale-Third Revision (WAIS-III)
 Wechsler Memory Scale-Third Revision (WMS-III)
 Trail Making Test
 Brief Test of Attention
 Controlled Oral Word Association Test (COWAT)
 Animal Naming Test
 Booklet Category Test
 Reitan-Indiana Aphasia Screening Examination
 California Verbal Learning Test-2 (CVLT-2)
 Rey Complex Figure Test
 Ruff Selective Attention Test
 Wide Range Achievement Test-Third Revision (WRAT-3)
 Finger Oscillation Test
 Test of Grip Strength
 Grooved Pegboard Test
 Sensory-Perceptual Examination
 Beck Anxiety Inventory (BAI)
 Beck Depression Inventory-II (BDI-II)
 Minnesota Multiphasic Personality Inventory-2 (MMPI-2)
 Clinical Interview and History

BEHAVIORAL OBSERVATIONS: The patient arrived promptly for her scheduled appointments and was neatly dressed and groomed. She completed about two hours of formal psychometric testing 9/22/04 but then complained of fatigue and indicated that she was too tired to continue. Her speech was slow and mildly slurred. Her gait also appeared mildly abnormal, but not obviously ataxic. Her mood appeared mildly anxious and she displayed a full range of appropriate affect. There was no evidence of psychomotor retardation or acceleration. Thought processes were generally linear but she made some tangential comments. She had no difficulty understanding or following test instructions. Effort and task persistence appeared good. Test results are judged to be a valid representation of the patient's current cognitive abilities.

TEST RESULTS

INTELLECTUAL FUNCTIONS: The patient's current WAIS-III performance places her overall intellectual abilities in the Average range at the 50th percentile. Verbal and nonverbal intellectual abilities are relatively commensurate. She earned a Verbal IQ of 102, which falls in the Average range at the 55th percentile. She earned a Performance IQ of 97, which also falls in the Average range at the 42nd percentile. She earned a Verbal Comprehension Index of 103 (58th percentile), a Perceptual Organizational Index of 99 (47th percentile), a Working Memory Index of 106 (66th percentile), and a Processing Speed Index of 93 (32nd percentile). Age-adjusted

RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 6

subscale scores are reported below (a scaled score of 10 is equivalent to average intellectual functions).

VERBAL SUBTESTS

Vocabulary	=	11
Similarities	=	11
Arithmetic	=	11
Digit Span	=	10
Information	=	10
Letter/Number Sequencing	=	12

PERFORMANCE SUBTESTS

Picture Completion	=	8
Digit Symbol	=	8
Block Design	=	10
Matrix Reasoning	=	12
Picture Arrangement	=	10
Symbol Search	=	10

Verbal subscale scores were quite uniform, all falling between the 50th and 75th percentiles. Her Performance subtests also all fell in the Average range, between the 25th and 75th percentiles. Strength was noted on a subtest involving fluid spatial reasoning.

ATTENTIONAL FUNCTIONS: Span of attention and mental control fell in the Average range on the Digit Span and Letter/Number Sequencing subtests. Her performance on the Trail Making Test Part A was mildly to moderately impaired and may have reflected some of her issues with depth perception secondary to vision. However, it was also consistent with slowed processing speed. She scored comparatively better on Part B of the test, suggesting fairly good alternating attention and cognitive flexibility. Her total speed on the Ruff Selective Attention Test was also quite poor, falling at only the 8th percentile. Her accuracy was good on this measure, falling in the Average range at the 47th percentile. Her auditory divided attention also fell in the Average range on the Brief Test of Attention.

MEMORY FUNCTIONS: Ms. Wright's verbal memory abilities generally fall in the Average range. On the WMS-III, she earned an Auditory Immediate Index of 105, which falls in the Average range at the 63rd percentile and reflects her verbal learning abilities. Auditory delayed recall was very strong, falling in the High Average range at the 87th percentile. She also scored well on a visual memory task. On the Visual Reproduction subtest, she scored at the 91st percentile for immediate recall and at the 63rd percentile for delayed recall. She did have trouble with the Rey Complex Figure Test, scoring below the 10th percentile for both immediate and delayed incidental recall. Her poor recall of this stimulus was likely a function of her ineffective organization and planning when copying and learning the figure. Verbal learning was excellent on the CVLT-2, a list-learning test. She showed good ability to benefit from repetition of information for learning and retained the majority of the information she learned.

LANGUAGE FUNCTIONS: Ms. Wright showed no evidence of gross expressive or receptive aphasia. She made no errors on the Aphasia Screening Examination. Verbal fluency fell in the Average range at the 60th percentile on the COWAT. Categorical fluency also fell in the Average range on the Animal Naming Test.

RE: JOAN WRIGHT
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PAGE 7

COMPLEX PROBLEM-SOLVING AND EXECUTIVE FUNCTIONS: Ms. Wright displayed a mildly impaired performance on the Booklet Category Test, making 67 errors, a performance falling at only the 16th percentile. This test requires logical analysis and abstract reasoning to solve novel spatial problems. She seemed to have some difficulty maintaining mental set. Verbal abstract reasoning on the Similarities subtest of the WAIS-III was good, falling at the 63rd percentile. Fluid spatial reasoning on the Matrix Reasoning subtest of the WAIS-III was also good, falling at the 75th percentile.

Ms. Wright shows evidence of some underlying executive dysfunction. As noted above, she used a poorly planned and disorganized approach in reproducing the Rey Complex Figure, leading to distortions in the figure and difficulty with subsequent recall. She also produced a mildly impaired performance on the Stroop Test, scoring in the 14th – 16th percentile range on the Interference Trial. This test reflects ability to inhibit a salient response set.

ACADEMIC ABILITIES: Ms. Wright's academic abilities are commensurate with her reported educational and occupational history. On the WRAT-3, reading recognition fell at the 63rd percentile, spelling at the 70th percentile, and arithmetic at the 45th percentile.

SENSORY-PERCEPTUAL AND MOTOR FUNCTIONS: Ms. Wright showed significant problems with upper extremity sensation. She was not able to perceive unilateral stimulation to her hands. Many of the sensory-perceptual subtests were not able to be administered. On the Tactile Form Recognition Test, a task assessing astereognosis, she was severely impaired. Fine motor coordination was severely reduced bilaterally on the Finger Oscillation Test (R = 13.6; L = 14.2). Grip strength was also reduced bilaterally (R = 15 kg; L = 14 kg). Fine motor coordination was markedly impaired on the Grooved Pegboard Test, falling below the 1st percentile.

PSYCHOLOGICAL AND EMOTIONAL STATUS: The patient's psychological and emotional status was assessed with a clinical interview, the BDI-II, the BAI and the MMPI-2. Upon clinical interview, Ms. Wright reported subjective depressed mood. She stated that some days during the week, she sleeps all day. She has difficulty motivating herself to do things. She is apparently involved in a fairly nasty divorce proceeding which she attributes as a major factor to her depressed mood. She also reported significant anxiety and noted that she has had fairly high levels of anxiety, both before and after the accident. She reported a pervasive loss of interest in activities as well as anhedonia. She also reported mild insomnia. She denied any suicidal ideation or intent. She did report poor appetite and noted that she has lost 35 pounds since the accident.

Ms. Wright earned a total BDI-II score of 32, indicating a moderate level of depressive symptomatology. On the BAI, she also endorsed a moderate level of anxiety symptoms.

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PAGE 8

Configuration of the validity scales on the MMPI-2 indicates a woman who readily endorsed psychological symptoms, possibly as an attempt to cry for help. She reports a high level of somatic symptoms, some of which may be neurologically-based but some may also have psychological origins. Individuals with similar profiles have a tendency to express distress via physical and somatic symptoms. Her profile also indicates a fairly high level of paranoia. She is involved in a fairly hostile divorce proceeding which may explain some of her endorsement of these items. Ms. Wright's profile is consistent with her clinical presentation, suggesting fairly high levels of anxiety and depression.

DSM-IV DIAGNOSIS:

AXIS I:	294.9	Cognitive Disorder, NOS.
	311	Depressive Disorder, NOS.
	307.89	Pain Disorder with Both Psychological Factors and a General Medical Condition.
Axis II:		Deferred.
Axis III:		Status post motor vehicle accident in January 2002 with multiple traumatic injuries including probable mild traumatic brain injury; hypertension; Grave's disease.
Axis IV:		Severe stress related to divorce, financial distress.
Axis V:		Current GAF = 55.

SUMMARY AND SYNTHESIS: Joan Wright is a 59-year-old woman who was involved in a serious motor vehicle accident in January 2002, in which she sustained multiple traumatic injuries, including pelvic and hip fractures, fractured ribs and a probable traumatic brain injury. The CT scan that was performed in the emergency room after her accident revealed some evidence of old bilateral small strokes as well as paraventricular white matter changes. Ms. Wright received inpatient rehabilitation services at Good Samaritan Hospital but noted that she did not receive much follow-up rehabilitation, secondary to the dysfunctional relationship with her husband. She continues to have what appears to be some fairly significant residual orthopedic issues as well as both upper extremity and lower extremity sensory problems. In addition, Ms. Wright has been struggling with depression and had taken an antidepressant in the past but discontinued this in August 2004. This medication was prescribed by her primary care physician, Rostom Rivera, M.D. She apparently recontacted Dr. Katherine Brzezinski-Stein, a psychologist who performed a Social Security disability evaluation, who suggested she contact this author for neuropsychological evaluation and treatment services.

**RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 9**

The results of the current neuropsychological evaluation are actually quite encouraging. Her clinical presentation is notable for somewhat slowed and slurred speech. Her overall processing speed appears to be mildly to moderately slowed. However, her intellectual abilities are well-preserved and appear to be at or near premorbid levels. Intellectual abilities fall in the Average range, with verbal and nonverbal abilities being relatively commensurate. She has some mild difficulty with higher-level attention. She had difficulty with a task requiring selective attention (ability to tune out distraction). Despite her complaints of memory problems, her learning and memory abilities were generally intact and in the Average range. It is suspected that day-to-day memory failures reflect her slowed processing speed as well as the impact of executive dysfunction. Ms. Wright shows good ability to benefit from repetition of information for learning, with no evidence of storage decay or retrieval deficits. She showed some mild difficulty with higher-level problem-solving, producing a mildly impaired performance on the Booklet Category Test. Verbal abstraction and fluid spatial reasoning were intact on the WAIS-III. There was evidence of mild executive dysfunction. Her organization and planning were poor on the Rey Figure. She also had some difficulty with set inhibition on the Stroop Test. There was no evidence of behavioral disinhibition or inappropriate behavior. However, she did display some tangentiality.

Ms. Wright showed severely reduced motor speed and dexterity as well as fine motor coordination. She reports numbness in her hands as well as her toes. Much of the sensory-perceptual examination was unable to be performed because she could not perceive the examiner's touch to her hands.

From a psychological standpoint, Ms. Wright continues to struggle with depression and a diagnosis of Depressive Disorder, NOS is being rendered. She reports subjective sad mood as well as anxiety. Energy level, motivation and interest in activities are all markedly reduced. She also reports anhedonia. She appears to be fairly isolated and stated that she spends much of her time sleeping. She is clearly deactivated. She also has increased her alcohol consumption in the last several months, probably as an attempt to diminish her emotional dysphoria. Unfortunately, this is further compounding her depression. Personality assessment indicates a woman with prominent somatic focus and there are likely significant psychological contributions to her pain and possibly her sensory and motor problems.

Ms. Wright likely did sustain a traumatic brain injury in the motor vehicle accident that occurred in January 2002. However, she appears to have experienced a fairly good recovery, at least from a cognitive standpoint. She also has some evidence of cerebrovascular disease with two previous strokes and some paraventricular white matter changes. Both the strokes and traumatic brain injury are likely contributing factors to her current cognitive presentation.

RECOMMENDATIONS:

1. Ms. Wright is currently receiving outpatient psychotherapy services from Lori Harrison, a mental health counselor in Tacoma. It is recommended that she continue

**RE: JOAN WRIGHT
REPORT OF NEUROPSYCHOLOGICAL EVALUATION
PAGE 10**

to receive these services. In addition, she would benefit from antidepressant medication for treatment of her mood disorder. She reported that Dr. Rivera had prescribed Lexapro, but she discontinued the medication after approximately a month. During the feedback session, she reported that she resumed taking the medication after her initial interview with this author. Ms. Wright reported that she is planning to transfer her primary care services from Dr. Rivera to another physician. She identified the reason for the transfer is that she does not want to have the same doctor as her husband. Her husband continues to see Dr. Rivera.

2. Ms. Wright would benefit from a consultation from a physical medicine and rehabilitation physician. A referral has been made to Dr. David Judish at Rainier Rehabilitation in Puyallup. Ms. Wright needs to have further workup to elucidate the nature of her sensory and motor problems. She also has a somewhat abnormal gait and reports some persistent issues with dizziness and balance. She may require some additional rehabilitation services. It appears that physical therapy and occupational therapy had been recommended for her following discharge from Good Samaritan, but she does not appear to have received these services. Dr. Judish can order indicated rehabilitation services as well as provide assistance to her with pain and possibly mood management.
3. Ms. Wright would benefit from receiving cognitive rehabilitation services to particularly address her slowed processing speed and issues with executive functioning. She would benefit from learning to use systematic compensation systems and strategies for these areas of limitation. She may also be a candidate for some vocational rehabilitation services in the future, but she needs more basic rehabilitation services before she is ready for vocational rehabilitation.



Dictated by:
LAURA DAHMER-WHITE, PH.D.
CLINICAL NEUROPSYCHOLOGIST

LDW/jk

Cc: David A. Judish, M.D.
8012 112th St Ct E Ste 120
Puyallup WA 98373
Lori J. Harrison, CNHC
7025 27th St W Ste 4
Tacoma WA 98466
Debra Josephson, Attorney at Law
3838 N 7th St
Tacoma WA 98406

Joan Wright
Page 5

measure of delayed memory. The 16 point disparity between the again significant and is suggestive of moderate left cerebral compromise.

The Trail Making tests were also administered which assess processing and psychomotor speed. Ms. Wright's performance was severely impaired on both of them.

Diagnosis: On the basis of history, clinical observation, and test data, the following DSM-IV diagnosis is offered.

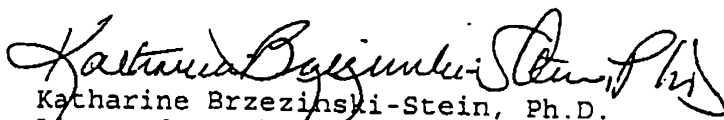
Axis I	294.0	Amnestic disorder due to traumatic brain injury
	309.0	Adjustment disorder with depressed mood
Axis II	799.9	Deferred
Axis III		Status post Graves disease, hypertension, traumatic brain injury, orthopedic injuries, headaches, tinnitus
Axis IV		Limited social support, unemployment
Axis V		GAF 52

Prognosis: Ms. Wright's current prognosis for return to full time competitive employment is considered to be guarded. Her adjustment disorder is going untreated and is no doubt complicating and exacerbating her amnestic disorder. It is therefore recommended that she be referred to a psychiatric consultation for medication evaluation along with concurrent outpatient psychotherapy to diminish symptoms of depression and anxiety, to learn compensation strategies for memory loss, to increase realistic self-confidence and to enhance self-esteem.

Capability to Manage Funds: By her own admission, Ms. Wright is no longer capable of engaging in activities of responsible financial planning and management despite her many years as an accountant. It is therefore recommended that she be appointed a payee should she qualify for Social Security Benefits.

Medical Source Statement: Despite her impairments, Ms. Wright exhibited reasonably good sustained attention and immediate/delayed auditory memory. Verbal reasoning was relatively adequate. Common courtesy and basic manners were intact. Ms. Wright also presented a good appearance from the standpoint of grooming and hygiene.

Thank you for the opportunity to evaluate this interesting woman. This examiner will be available for questions or for additional consultation as needed.


Katharine Brzezinski-Stein, Ph.D.
Licensed Psychologist (#1553)

KBS:cm

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Laura Dahmer-White, Ph.D.
Clinical Neuropsychology

PROGRESS NOTE

PATIENT NAME: JOAN WRIGHT
DATE OF SERVICE: 7/28/05

SERVICES RENDERED: FOUR UNITS OF 96151 HEALTH AND BEHAVIOR REASSESSMENT

Joan Wright is a 59-year-old woman who was seen in the fall of 2004 for a neuropsychological assessment. She had a serious motor vehicle accident in 8/02 in which she sustained a probable traumatic brain injury. The patient presented today for a follow-up assessment. She had been scheduled for follow-up a month or two after the feedback but failed the appointment.

MENTAL STATUS: Ms. Wright arrived early for her scheduled appointment and was neatly dressed and groomed. She continued to have gait abnormalities and walked with a slow shuffling-type gait. Her mood was angry, agitated and depressed. Affect was somewhat labile with anger and tearfulness. Thought processes were disorganized. Voice volume was elevated. Eye contact was good and there was no evidence of psychomotor retardation or acceleration. Speech was pressured and she tended to perseverate on the inequities of her marriage and divorce.

MEDICATIONS: Thyroid and Micardis.

PRESENTING COMPLAINTS: Ms. Wright complained of significant stress related to her divorce. She indicated that her marriage is now dissolved but feels that she was wronged in the settlement. She expressed significant anger at her attorney and plans to appeal the judgment. She stated, "I'm divorced with nothing." She continues to complain of headaches and noted that the Aleve that has been recommended by her physicians is not helpful in reducing her headache pain. She complains of continued cognitive problems, speech disfluency and cognitive foginess. She continues to receive follow-up medical care from Dr. Rivera but expresses an intention to change primary care providers. She also continues to receive services from Dr. Judish and Dr. Baxtrom. She noted that she has not had the energy to follow through with speech therapy. She does continue to work with her counselor, Lori Harrison, but noted that she is not a Medicare provider and expresses financial hardship in seeing her more than once or twice a month. She is not taking any psychotropic medications. She did note that she has recently obtained prism lenses from Dr. Baxtrom which are helping with some of her visual problems.

**RE: JOAN WRIGHT
PROGRESS NOTE****Page 2 of 2**

ASSESSMENT: Ms. Wright's psychological status seems to have deteriorated since she was last evaluated by this author. At that time she met the diagnostic criteria for depressive disorder NOS. She clearly is experiencing a significant mood issue and is in need of mental health services. She also continues to experience cognitive sequelae of the motor vehicle accident and traumatic brain injury and needs to follow-up with cognitive rehabilitation.

PLAN/RECOMMENDATIONS:

1. It is recommended that Ms. Wright resume weekly psychotherapy services. She reports a very good relationship with Lori Harrison, LMHC, but noted that financial issues were a major factor in her decision to decrease frequency of sessions. I encouraged her to schedule a follow-up appointment with Ms. Harrison to discuss this issue. A referral may need to be made to another mental health provider who can see her on a weekly basis.
2. It is recommended that Ms. Wright be referred to a psychiatrist for medical treatment of her mood disorder. She was very tearful during the session today and had difficulty with self-regulation with pressured speech. She stated "This is the first time in my life that I have really been concerned about me." She would clearly benefit from some psychotropic medication. I will defer to Dr. Judish or Lori Harrison to make a referral to a psychiatrist in the Puyallup-Tacoma area.
3. Ms. Wright was strongly encouraged to follow through with speech therapy services.

I plan to see the patient back in follow-up in a month to evaluate her neuropsychological status and to insure follow through with the above recommendations.



Dictated by:
LAURA DAHMER-WHITE, PH.D.
CLINICAL NEUROPSYCHOLOGIST

LDW/bw

cc: David Judish, M.D.
cc: Lori Harrison, LMHC



Laura Dahmer-White, Ph.D.
Clinical Neuropsychology

PROGRESS NOTE

DATE OF SERVICE: 9/20/05

PATIENT NAME: JOAN WRIGHT

**SERVICES RENDERED: 4 UNITS OF 96151 HEALTH AND BEHAVIOR
REASSESSMENT**

The patient was seen in follow-up today after previous session on 7/28/05 when she was observed to be experiencing significant emotional dysphoria. This author recommended referral for psychiatric services and resumption of weekly psychotherapy services for treatment of an underlying mood disorder.

Ms. Wright reported that she was referred to Dr. Daniel Wanwig, a psychiatrist in Pierce County, by Dr. Judish and has started Zoloft for treatment of her mood disorder. She also will begin speech therapy at Good Samaritan Hospital on 9/22/05. She noted that she is continuing to see Lori Harrison, her mental health counselor. She is involved in some ongoing legal proceedings related to her divorce. She also made some statements suggesting that her attorney has filed some sort of guardianship proceedings. Ms. Wright indicated that she has been told that a guardian ad litem will be appointed for her.

SUBJECTIVE: Ms. Wright reported that her mood seems to have improved since beginning Zoloft. She was unable to report the dosage of Zoloft but noted that she started at 25 mg. She noted that her sleep improved after starting Zoloft but has deteriorated somewhat in the last week. She continues to report minimal appetite and struggles to maintain her weight. However, she noted that she is emphasizing nutrition and attempting to eat high protein drinks such as Ensure and fruit.

SUBJECTIVE/MENTAL STATUS: The patient's mood was considerably improved compared to last session in 7/05. Her speech was no longer pressured and was fluent and of normal rate and volume. She was much less agitated and no tearfulness was observed during the session. Her thought processes were more organized and she was able to answer questions much more directly. She was much less perseverative during today's session on her divorce and the financial challenges associated with that situation.


IMPRESSIONS: Ms. Wright's psychological status is clearly improved since she began psychiatry services and resumed psychotherapy. This author is also very encouraged that she has begun speech therapy services. She continues to experience significant cognitive sequelae from the traumatic brain injury she sustained and the

RE: JOAN WRIGHT

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cognitive deficits combined with her mood disorder significantly limit her functional independence.

PLAN/RECOMMENDATIONS: Ms. Wright's primary goals at this time are to improve her cognitive and functional status. We agreed that she would focus her efforts on speech therapy and current mental health treatment providers. We did not schedule a follow-up appointment but I indicated that I would be more than willing to see her in the future as the need arises. She will call to schedule an appointment on a prn basis.



Dictated by:

Laura Dahmer-White, Ph.D.

LDW/bw

cc: David Judish, M.D.

cc: Lori Harrison LMHC

cc: Daniel Wanwig, M.D.

PIERCE COUNTY No. 05-4-01384-5

EXHIBIT D



AUTISM/ A.D.D. RESOURCES INC.
25947 Gold Beach Drive S.W.
Vashon Island, Washington 98070
(206) 463-5237

Michael R. McCarthy, MSc PhC QMRP Marcialyn McCarthy, MAEd
E-Mail: earait@aol.com Website: www.aitresources.com

Date: 5 January 2005

NAME: Joan Wright

DATE OF BIRTH: September 18, 1945

ADDRESS:
34813 72nd Ave. E.
Eatonville, Washington 98328

DIAGNOSIS:
Closed Head Injury as a result of an auto
accident

MAJOR CONCERNS:
Language processing problems
Attentional problems
Problems with multi-tasking
Balance and vestibular-based problems
Auditory disturbances and inconsistencies
(tinnitus)
Erratic sleep patterns

REFERRAL INFORMATION:

Joan Wright was referred by an acquaintance to this office for a passive test of hearing. Currently Joan is 59 years, 3 months old. She had an automobile accident January 16, 2002 in which she sustained fractures to both hips, broken pelvis, 7 broken ribs, one which punctured her lung. Of longer lasting importance is the extent of the head injury she suffered during this accident. She was hospitalized post-trauma to approximately February 7, 2002.

Ms Wright is currently taking various medications to control pain from headaches, regulate thyroid and for anxiety and depression. Hearing health history is not remarkable. Ms Wright remembers having ear aches as a child, but does not recall having ear infections (which may affect hearing). She had her tonsils out at age 22 and remembered having a three week bout of strep throat.

By self-report, she believes her auditory memory, auditory sequencing, auditory figure/ground and her auditory attention span to be slow. All of these types of complaints have been impacted enormously by the auto accident of 2002. She "hears" the sound of water rushing and hears scraping in her right ear. This self-report of hearing sounds is called tinnitus, (a likely result of head injury).

At the intake consultation of this date, Ms Wright reports that her balance and coordination are poor and that she sometimes must hold onto a wall or object to stabilize herself. Numbness in her fingers and toes impacts daily living skills, such as fastening clothing, computer usage, ambulation and orientation. Ms. Wright speaks slowly with some disturbed vocal cadence and inflection. She is unable to modulate her voice to environmental needs. She has word finding problems and has verbal dyslexia, (saying one thing when she actually means to say another, i.e., identifying colors). Likewise, her receptive language is badly impacted. She processes language slowly and even confuses simple commands. She feels she must speak quickly in order to say what she has in mind. Even though, she knows that she 'cuts people off' and is impolite. She feels she must speak her thoughts or she'll become distracted and forget them. There are some days when Ms Wright feels that speech is so difficult that she will not answer the telephone or answer the door. It takes too much effort just to maintain coherent thoughts and produce speech. Because of visual disturbances exacerbated by the auto accident, she does not find reading to be relaxing or be a stress reliever.

Before the auto accident, Ms Wright reports her weight to have been 135 pounds, now she weighs around 100 pounds. She finds that foods lack taste and has no appetite. She drinks "Boost", to keep her weight at present levels. She experiences piercing headaches at the back of her head with flickers of 'hot spots' across her scalp. She also experiences stabbing pains behind her eyes.

At this time, Ms Wright is being counseled by Laurie Harrison, a domestic violence specialist. She is also making appointments with other therapists and physicians for various complaints related to her accident and/or impending divorce.

There are quite a number of areas of specific concern about Ms Wright's hearing and processing of her sensory world. The following is a checklist used at the intake interview to discover areas of need and points of concern.

HEARING

- ✓ Has a sensation of hearing loss – post accident
- ✓ Has difficulty following verbal directions (do you have to repeat instructions)
- ✓ Has problems learning by auditory means alone
- ✓ Has problems relating to what is heard as opposed to what is seen
- ✓ Has a short auditory attention span (only able to listen for a few seconds)
- ✓ Has a short attention span
- ✓ Daydreams - his or her attention drifts - "not with it at times"
- ✓ Easily distracted by background noise
- ✓ Has a "startle" response to sudden sound or movement – more so after the accident
- ✓ Hums constantly or engages in audible self-talk
- ✓ Needs frequent "quiet time" to regain mental energy and composure
- ✓ Has a language problem (cadence, modulation, word finding)
- ✓ Has an articulation problem (slower cadence, unusual inflection)
- ✓ Has a diagnosis of closed brain injury, verbal and auditory dyslexia, possible Central Auditory Processing Disorder

TEMPERATURE

- ✓ sensitive to air temperature, especially when breathing through nose
- ✓ heightened awareness of body temperature – unable to regulate body temperature – feels cold all the time

OVERALL COMPLAINTS

- ✓ easily distracted
- ✓ difficulty prioritizing stimuli
- ✓ problems following directions
- ✓ poor speech or articulation
- ✓ erratic sleep patterns
- ✓ sensitive to loud noise and commotion
- ✓ unusually low energy level – poor endurance
- ✓ "falls apart" on a regular basis
- ✓ short attention-span in group setting/good attention span as an individual
- ✓ may appear clumsy or "spacey"
- ✓ impulsive – more so since accident
- ✓ may speak unusually loudly all the time
- ✓ distorted perception – poor visual perceptual skills
- ✓ bumps into people and things

MOTOR PLANNING

- ✓ difficulty climbing in and out of cars
- ✓ difficulty going up and down stairs- because of hip injury
- ✓ falls out of chairs
- ✓ walks into objects

CLOTHING

- ✓ is bothered by seams in clothing
- ✓ experiences difficulty manipulating buttons, zippers, snaps or ties – poor digital tactual input
- ✓ wants all tags in clothing removed

FOOD

- ✓ sensitive to texture – little sensation of taste since accident
- ✓ lacks sensation of taste
- ✓ frequently spills both food and drinks
- ✓ dislikes carbonated beverages

SELF-CARE SKILLS

- ✓ difficulty with zippers, buttons or snaps
- ✓ difficulty pulling on socks and shoes
- ✓ Clenches jaw while sleeping

GROSS MOTOR

Balance and coordination skills:

Poor ← 1 2 3 4 5 6 7 → Very good

Overall abilities in motor planning:

Poor ← 1 2 3 4 5 6 7 → Very good

Tactile sensitivity:

Dislikes being touched ← 1 2 3 4 5 6 7 → Seeks out touch

Pain threshold

Low ← 1 2 3 4 5 6 7 → High

LANGUAGE

Voice volume control:

Too Soft ← 1 2 3 4 5 6 7 → Very loud

Voice inflection & cadence & rhythm

Poor ← 1 2 3 4 5 6 7 → Very good

Complexity of language & range of vocabulary/word finding:

Poor ← 1 2 3 4 5 6 7 → Very good

Receptive language processing:

Poor ← 1 2 3 4 5 6 7 → Very good

Response Rate to words:

Poor ← 1 2 3 4 5 6 7 → Very good

Asking questions- 'wh' questions: what, when, where, why, who, how

Poor ← 1 2 3 4 5 6 7 → Very good

SOCIAL RECIPROCITY

Eye contact with familiar people:

Poor ← 1 2 3 4 5 6 7 → Very good

Eye contact with less familiar people:

Poor ← 1 2 3 4 5 6 7 → Very good

Self-initiated social contact:

appropriate ← 1 2 3 4 5 6 7 → inappropriate

Length of social interchange:

Very short ← 1 2 3 4 5 6 7 → Too long

FINE MOTOR

Visual-motor coordination:

Poor ← 1 2 3 4 5 6 7 → Very good

Kinesthetic memory:

Writing skills, letters spaced well, formed well, draws well:

Poor ← 1 2 3 4 5 6 7 → Very good

Uses appropriate pencil grip? _____

Self Help Skills

Poor ← 1 2 3 4 5 6 7 → Very good

Ms. Wright mentions that her writing varies so much day-to-day, that some times she is unable to recognize her own signature.
ATTENDING/FOCUSING

Interest in environment:

Poor ← 1 2 3 4 5 6 7 → Very good

Response time for motor planning:

Poor ← 1 2 3 4 5 6 7 → Very good

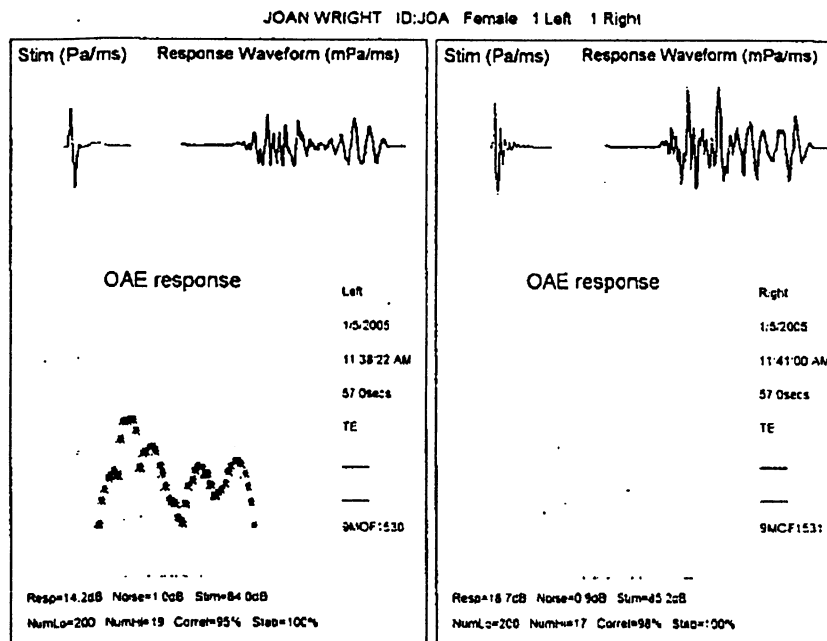
Multiple-step/task chaining: How many steps?

Poor ← 1 2 3 4 5 6 7 → Very good

✓ All audiometric data attached were obtained using the Otoacoustic Emissions Test (ILO288) protocol and 6.0 software. The test results represent peripheral nerve cell activity. Testing measures the radiated sonic emissions from the cochlea in direct response to sounds emitted into the external ear. The sounds emitted cover the normal audiometric range.

The test given to Joan Wright on this day, was a passive hearing testing of the inner ear. Many hospitals use this same equipment on babies who may be at risk for congenital deafness. The test is performed so that there is no contamination of client response. In other words, one cannot influence the results of this test. There is more to hearing than the mechanics of the inner ear. The brain plays a large part in the processing and interpretation of environmental and language sounds. The brain must prioritize and instantaneously register the importance of these vibrational stimuli and perform a number of important interpretation tasks.

While the test is given, a small probe is placed inside the ear canal, the person hears very soft, short bursts of static sounds. These static bursts are electronically bundled sound stimuli meant to vibrate the receiver hairs of the cochlea, then send the echoes back to the computer for graphing.



COMMENTS:

The hearing profiles above represent good hearing response to sound signals. The phenomenon of tinnitus is largely found by self-report. Ms Wright complains of hearing noises in the right ear. The profile above does not indicate a problem. Since tinnitus may be caused by "cross-talk" between nerves, this will not show up in a test of this type. Often tinnitus may be caused by blow to the head or industrial exposure to loud sounds.

RECOMMENDATIONS:

1. As hearing complaints continue to be a problem, even with accommodations we strongly recommend making an appointment to undergo auditory integration training. This procedure has a very high track record of success in reducing auditory hyperacusis (sensitive hearing), improving receptive language and auditory attention span.

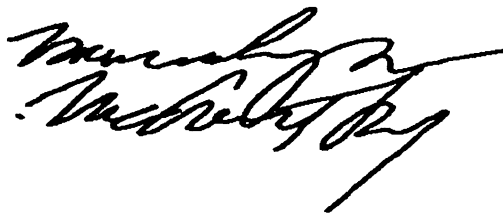
Ms Wright also has problems with auditory fatigue and auditory figure/ground discrimination, language decoding, and susceptibility to auditory distractions. All of these difficulties become major factors in defining Central Auditory Processing Disorder. Several studies have indicated auditory integration training's effectiveness in ameliorating the symptoms of Central Auditory Processing Disorder and improving overall sensory integration.

Ms Wright has a high need for auditory training intervention to relieve stress and anxiety related to auditory, vestibular and visual sensory integration.

2. When giving directions, ensure that you have full eye contact before giving the instructions. If necessary use an orienting prompt such as calling Ms. Wright's name to gain her attention. A short period of eye contact will allow him to better ignore environmental distractions while listening. It will be necessary to give Ms Wright any instructions in written form, so that she has something to refer back to, as memory and multi-tasking is faulty.

3. If giving complex or multiple step instructions, take a three to five second pause after each major component or step. This will provide additional processing time. In some cases longer pauses of up to thirty seconds may be needed. Experiment with various lengths of time until you find the optimal period. Avoid the urge to re-prompt before the time has elapsed.

4. If no response is given to the first verbal direction, **do no restate the direction using different words**. Repeat the directions precisely as given the first time. Restating in different words simply means Ms Wright now has two messages to decode rather than one. Per Joan's requests, all multiple or sequenced tasks should be committed to paper for him to refer back to.



Marcialyn McCarthy, MA-Ed
Special Education Consultant

Registered Counselor
Washington State Dept. Of Health
Provider # RC00021374



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Michael R. McCarthy, MSc PhC QMRP **Marcialyn McCarthy, MAEd**
 E-Mail: earait@aol.com Website: www.aitresources.com

Date: 25 January 2005

INTERIM REPORT to Josephson and Associates, Inc., P.S.

NAME: Joan Wright

DATE OF BIRTH: September 18, 1945

ADDRESS:

34813 72nd Ave. E.
 Eatonville, Washington 98328

DIAGNOSIS:

Closed Head Injury as a result of an auto accident

MAJOR CONCERNS:

Language processing problems
 Attentional problems
 Problems with multi-tasking
 Balance and vestibular-based problems
 Auditory disturbances and inconsistencies (tinnitus)
 Erratic sleep patterns

OVERVIEW:

At the request of Deborah Josephson, I am writing an interim report to detail progress to-date with my client, Joan Wright. Since Auditory Integration Training is a ten-day passive therapy, and we are in day two of the training, there is not a lot to report. Let me take this opportunity to describe some of the behaviors that make Ms. Wright a good candidate for this therapy. My initial consultation report details my impressions of a 59 year old car accident victim (January 16, 2002) who suffered broken bones and moderate to severe closed head injury.

Ms. Wright is divorced, since the accident and is unable to work due to the disabling effects of closed head injury. Ms. Wright walks in short mincing steps as a result of broken pelvis and hips. Her voice volume is unregulated and her voice cadence is broken and halting. She often repeats ideas and flares into angry dialogs about how her husband has treated her. Angry outbursts and negative behaviors are not uncommon with closed head injuries. Head injured individuals are often organizationally challenged. They know that they have objectives to accomplish, but are unable to organize their day to meet the demands. They are often unable to prioritize tasks.

Auditory Integration Training (AIT) is one of the therapies used for closed head injured clients. AIT is used to improve aspects of language processing and vestibular and balance issues. Often post-trauma, the closed head injured client is referred to us by other therapists and

attorneys, because the patient or client may be difficult to work with or unable to follow simple instructions. Oftentimes they need clearly written guidelines and must be reminded to consult their calendar to make appointments.

People with head injuries tend to have poor sequencing skills, they may not be able to recount an event sequentially or follow a sequence of instructions. Like other people with neurological problems, they may not be able to fit the right word into their speech. They may be thought of as being inarticulate under pressure. Pressure may be perceived of as being in the presence of more than one person. This, for them may constitute a 'group'. They may change their entire communication scheme, be unable to regulate their voice, follow a story line or truly engage in conversation. They may become anxious and are liable to panic.

----- As a result of pervasive anxiety, many people with head injuries exhibit labile emotions. Once an emotion is triggered, they are unable to transition back to a stable emotional state. Once they become angry, it's difficult to curtail discussion. Once they begin to cry, they are unable to control themselves. In addition are issues of memory. Anxiety interrupts clear recall of events. Ms. Wright may take quite a long time to bring a memory to the surface. Her ability to link one memory with another may be quite disturbed. Another feature of brain injury is impulsiveness. They may not have their former ability to self-regulate aspects of their behaviors. They may react without thinking and do things completely out of character. They may blurt out inappropriate words. Anxiety may give way to fear, impulsivity and poorly planned behaviors.

Integration of sensory inputs often suffer in head injured people. Aspects of the senses are disturbed in odd ways. I have mentioned in the earlier report that Ms Wright has little or no sensation in her fingers and toes. This affects proprioception (knowledge of where one is in space). This may result in stumbling or interrupted walking and running gaits. This will cause additional anxiety. Ms Wright has expressed problems with taste and gustatory function. She does not enjoy the textures of foods and has limited taste sensations. Eating is not enjoyable. As a result, she has lost a good deal of weight since her accident. Head injured individuals often experience disturbed vision. Because of trauma (rapid head swinging --as in a car accident), the eyes and the surrounding musculature suffer. Sometimes, the entire horizon is shifted, making balance and coordination difficult. Many times, the individual is unable to track smoothly across a page of print, making reading nearly impossible. The print on the page actually gets up and starts moving and swirling around. Imagine the impact this has on driving!

BEHAVIOR AS IT RELATES TO COMPETENCY

With the background provided me by Ms Josephson, with regard to Ms Wright's behavior during the divorce hearing, and with the descriptions of the same scene from Ms Wright, I am frankly amazed that its really the same story. Ms. Wright clearly did not understand the import of her signature on the papers of the divorce decree. Although she has described the scene over and over, never did she mention signing papers and having her property divided. She felt that she was unable to tell her side of the story, despite the fact that Attorney Josephson actually took the agreement out of her hands at one point and told her that they would instead go to trial.

Several elements trouble me about the description of the hearing. From my knowledge of head injured clients, being late for an appointment would be anxiety-provoking. I would imagine

that with the visual problems that Ms Wright experiences would have made the drive to the courthouse extremely difficult, adding to her anxiety levels. As anxiety levels rise, coping is reduced and brain processing is slowed. The hearing setting and subject matter alone were a highly charged topics for Ms Wright. This means that the client is able to take in less by means of language. While the ears are intact, the brain cannot keep up with the flow of words. The individual falls further and further behind in the flow of conversational meaning.

It is quite conceivable that Ms Wright did not fully comprehend the actions and content of the proceedings of the hearing. I understand that in order to bring about a binding contract for settlement agreement that one must behave as a competent party. In my opinion, Ms Wright, in a group setting, with mounting anxiety did not constitute full competency on that day. Two years, eight months post trauma it is not uncommon for symptoms of closed head injury to remain prominent. Ms. Wright's healing process is a long-term affair. While her body may be healing (she still suffers severe pain), her brain, a far more fragile organ, is still recuperating and may take more time. It is very important for Ms Wright to continue therapies of a rehabilitative nature.

While in a one-on-one conversation, Ms Wright self-regulates quite well. She is well-groomed and very stylish. These features actually work against her under stress, because for all intents and purposes she appears competent. There are no outward clues to her poor processing.

In the material Ms Josephson has given me, I see that there are 21 separate issues that Ms. Wright was required to consider. In my discussions with Ms Wright, she thought that the hearing would take on a series of discussion points. Her pre-conception of what a hearing would look like was over-riding what was really happening. She believed that she would enter into some discussion of matters. In the haze of processing problems, I can see how Ms Wright hastily signed the documents, not attaching any importance to them. Her signature on the papers did not constitute full awareness of implications in my opinion. Even though Ms Josephson had gone over the details of the agreement beforehand, it is quite conceivable that under pressure, Ms Wright would have been a total loss to understand the full significance of the events.


 Marcialyn McCarthy
 Director of Autism/ADD Resources, Inc.

17 May 2005
 Date

APPENDIX "C":
DAILY ACTIVITIES QUESTIONNAIRE

DAILY ACTIVITIES QUESTIONNAIRE - OTHER PERSON

CLAIMANT'S NAME: JOAN H WRIGHT

The following questions are concerning JOAN H WRIGHT's application for disability benefits. Your answers will help us evaluate this claim. Although some questions may only require a "YES" or "NO", PLEASE EXPLAIN IN AS MUCH DETAIL AS POSSIBLE. Use additional paper if needed.

YOUR NAME:

RELATIONSHIP TO JOAN H WRIGHT. *husband*

HOW LONG HAVE YOU KNOWN THIS PERSON? *30 years*

HOW OFTEN DO YOU SEE HIM *(HER?)* *daily*

WHEN DID YOU LAST SEE HIM *(HER?)* *today*

BACKGROUND

1. Describe your observations which show a mental or emotional problem.

Short term memory lapses and concentration problems along with many physical problems since auto. accident on 1-16-02.

2. Are you aware of a particular time when these first began to show up?

Auto accident on 1-16-02.

3. Does he *(she)* have problems paying attention?
If YES, explain.

(YES) NO

Unable to pay attention and follow instructions or directions and memory loss since auto accident on 1-16-02.

4. Can he *(she)* follow spoken or written instructions?
If NO, explain.

YES *(NO)*

Short term memory loss upon spoken instructions - does well with written instructions but bad with puzzles.

5. Can he *(she)* finish what is started? (chores, reading, etc.)
If NO, explain.

YES *(NO)*

Shortness of breath. Needs rest between chores. Unable to sit or lay in one spot long.

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JOAN H WRIGHT

6. Does he (she) have memory problems? YES NO
If YES, please explain and how often it occurs.
Short term lapse in memory due to Auto wreck.
7. Describe his (her) usual mood. (ie: anxious, sad, angry, depressed, etc.)
Very much since auto accident on 1-16-02.
8. Does he (she) get upset about changes in routine? YES NO
If YES, explain.
Everything Joan does is a change in routine since her auto accident.

SOCIAL FUNCTIONING

1. Does he (she) visit with family members in person or on the telephone? YES NO
yes
How often and how long do the visits occur?
Daily
2. Does he (she) participate in conversations? YES NO
If YES, how well?
Her health is the subject of conversation.
3. Does he (she) have friends or go out socially with friends? YES NO
What kind of activities does he/she participate in?
Not much since auto accident.
4. Does he (she) argue and/or become fearful or suspicious of friends? YES NO
How does his/her fear or suspicion show?
5. Briefly describe his (her) relationship with former employers, supervisors and coworkers. Was the behavior at work appropriate?
yes. Very good employee.
6. Has he (she) ever lost a job because of problems getting along with people? YES NO
If YES, explain.

JOAN R WRIGHT

7. Has his/her manner of dealing with people changed since he/she became ill?
If YES, please describe.

YES NO

Joan has been unable to get around or go to work. Her injuries are many.

PERSONAL HABITS

1. Describe his/her grooming habits in terms of appropriateness, neatness and cleanliness.

Very clean person. House neat and clean although chores are hard for her to do and require rest.

2. Has the way the claimant cares for him/herself changed since becoming ill?
If YES, please describe.

YES NO

Lots of help from others.

3. Does he/she dress daily?

YES NO

Does he/she wear appropriate clothing for the weather or for specific activities?

YES NO

4. Does he/she need special help or reminders to take care of personal needs or grooming?
If YES, what kind and how often?

YES NO

Reminder to take prescriptions on a routine.

ACTIVITIES OF DAILY LIVING

1. Does he/she take care of anyone else? (spouse, children, grandchildren, pets)

YES NO

What does he/she do for them?

2. Does he/she cook?

YES NO

If YES, please describe the type of food he/she prepares.

Easy and quick meals, once or twice daily.

3. Describe his/her ability to participate in household chores.
(ie: what type, how frequently, how well done)

Does some laundry and dishwashing and light cleaning but unable to lift anything heavy.

JOAN H WRIGHT

4. Can he/she drive an automobile?
If YES, how often does he/she drive?

YES NO

ONE short drive daily if possible

Can he/she use public transportation (ie: bus or taxi) without assistance? Does NOT use public transportation.

YES NO

If he/she does not travel alone, why and what kind of help is needed?

NONE

5. Does he/she participate in planned activities outside the home? YES NO
If YES, how often does he/she participate?

Please give details on his/her participation in these activities in terms of appropriateness.

6. List any hobbies or recreational activities in which he/she participates.
NONE since auto accident on 1-16-02.

Describe how often and for how long at a time he/she participates.

7. Does he/she watch TV or listen to the radio?

YES NO

How frequently and for how long at a time?

1-3 hrs. per day.

Does he/she understand and remember what occurred?

YES NO

8. Can he/she read and write?

YES NO

9. Describe any change there has been in his/her ability to handle money, (ie. shopping, managing a checking/savings account, paying bills)

Joan has memory and physical problems since the accident so I handle and manage our finances.

If help is needed, what kind of help does he/she need?

I do it all for her.

JOAN H WRIGHT

10. Does he she take medication independently?YES NO

If NO, what type of assistance is needed?

Reminders -11. Are his her current daily activities noticeably different from what they were before he she became ill?YES NO

If YES, please describe.

Unable to do any lengthy activities. Unable to work. Unable to lift or move objects.

12. Any other items that you would like to mention regarding JOAN H WRIGHT's disability?

None .Robert Wright

Signature

7-16-2002

Date

Address: 2515 176th St ETacoma, WA 98445Phone No: (253) 5353940

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F/L 8/00

APPENDIX "D":

CERTIFICATION OF DR. LAURA DAHMER-WHITE



03-3-02859-1 28435379 CRT 11-08-06

FILED
IN COUNTY CLERK'S OFFICE

A.M. NOV - 3 2006 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY LC DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Marriage of:

NO. 03-3-01859-1

JOAN H. WRIGHT,

CERTIFICATION OF DR. LAURA DAHMER-
WHITE

Petitioner,

and

ROBERT WRIGHT,

Respondent.

Attached hereto is a copy of the certification and letter from Dr. Laura Dahmer-White dated September 22, 2006 stating with a reasonable degree of medical certainty that Ms. Wright was incapacitated on the date she signed the Settlement Agreement in late 2004 or early 2005. The original of this document was filed in the Guardianship of Joan H. Wright, Pierce County Cause No. 05-4-01384-5.

DATED this 3 day of November, 2006.

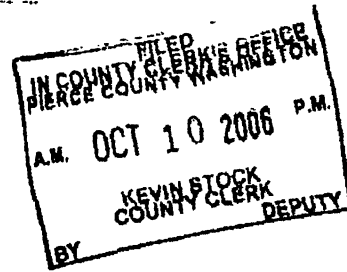

ROBIN H. BALSAM, WSBA #14001
Attorney for Guardian

CERTIFICATION OF DR. DAHMER-
WHITE- 1

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ORIGINAL

BALSAM McNALLEN LLP
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Guardianship of:

NO. 05-4-01384-5

JOAN H. WRIGHT,

CERTIFICATION OF DR.
LAURA DAHMER-WHITE

An Incapacitated Person.

Attached hereto is a letter that I wrote on September 22, 2006 stating with a reasonable degree of medical certainty that Ms. Wright was incapacitated on the date she signed the Settlement Agreement in late 2004 or early 2005.

I declare under penalty of perjury in accordance with the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 10th day of October 2006 at Olympia, Washington.

LAURA DAHMER-WHITE

CERTIFICATION OF
DR. DAHMER-WHITE- 1

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BALSAM McNALLEN LLP
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

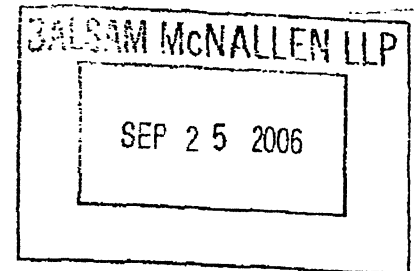
COPY



Laura Dahmer-White, Ph.D.
Clinical Neuropsychology

September 22, 2006

Robin Balsam, Attorney at Law
609 Tacoma Ave. South
Tacoma, 98402



RE: Joan Wright
DOB: 9-18-45

Dear Ms. Balsam:

I received your letter dated 8/31/06 regarding Joan Wright, with the accompanying documentation. It is my understanding that you would like a written medical opinion regarding Ms. Wright's cognitive capacity at the time she signed a legal document for settlement in 2004. I have reviewed the Order Appointing Guardian of Estate and a Limited Guardian of Person executed on 10/31/05.

As you know, Ms. Wright sustained a traumatic brain injury in a motor vehicle accident in 1/02. Her head CT scan at that time also revealed evidence of old bilateral small strokes and periventricular white matter changes. The guardianship order dated 10/31/05 stated, "She is incapacitated as of the date of her closed head injury due to car accident in January of 2002." Given that Ms. Wright showed evidence of significant cognitive deficits when evaluated by Dr. Brzezinski-Stein in 8/02 and when she was evaluated by me in 9/04, it is my opinion, with a reasonable degree of medical certainty, that Ms. Wright was incapacitated on the date she signed the settlement agreement in late 2004 or early 2005.

Thank you for the assistance you have provided and are continuing to provide to Ms. Wright. Please feel free to contact me if I can be of any further assistance.

Sincerely,

Laura Dahmer-White, Ph.D.

APPENDIX “E”:

TEXT OF STATUTES – RCW 4.08.060, SPR 98.16W, RCW 11.96A.150, AND

RCW 26.09.140

4.08.030 Either husband or wife may sue for community—Necessary parties. Either husband or wife may sue on behalf of the community: PROVIDED, That

(1) When the action is for personal injuries, the spouse having sustained personal injuries is a necessary party;

(2) When the action is for compensation for services rendered, the spouse having rendered the services is a necessary party. [1972 ex.s. c 108 § 1; Code 1881 § 6; 1877 p 4 § 6; 1875 p 4 § 2; 1869 p 4 § 6; 1854 p 131 § 5; RRS § 181.]

4.08.040 When husband and wife may join, defend. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them.

If a husband and wife be sued together, either or both spouses may defend, and if one spouse neglects to defend, the other spouse may defend for the nonacting spouse also. And each spouse may defend in all cases in which he or she is interested, whether that spouse is sued with the other spouse or not. [1972 ex.s. c 108 § 2; Code 1881 § 7; 1877 p 4 § 7; 1875 p 4 § 3; 1854 p 219 § 492; RRS § 182.]

4.08.050 Guardian ad litem for infant. Except as provided under RCW 26.50.020 and 28A.225.035, when an infant is a party he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he or she be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he or she be of the age of fourteen years, and applies within thirty days after the service of the summons; if he or she be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant. [1996 c 134 § 7; 1992 c 111 § 9; 1891 c 30 § 1; Code 1881 § 12; 1854 p 132 §§ 6, 7; RRS § 187.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

4.08.060 Guardian ad litem for incapacitated person. When an incapacitated person is a party to an action in the superior courts he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

(1) When the incapacitated person is plaintiff, upon the application of a relative or friend of the incapacitated person.

(2) When the incapacitated person is defendant, upon the application of a relative or friend of such incapacitated person, such application shall be made within thirty days after the service of summons if served in the state of Washington, and if served out of the state or service is made by publication, then such application shall be made within sixty days

[Title 4 RCW—page 2]

after the first publication of summons or within sixty days after the service out of the state. If no such application be made within the time above limited, application may be made by any party to the action. [1996 c 249 § 5; 1899 c 91 § 1; RRS § 188.]

Intent—1996 c 249: See note following RCW 2.56.030.

4.08.080 Action on assigned choses in action. Any assignee or assignees of any judgment, bond, specialty, book account, or other chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, named in such judgment, bond, specialty, book account, or other chose in action, notwithstanding the assignor may have an interest in the thing assigned: PROVIDED, That any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned, save that no counterclaim or offset shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all interest therein. [1927 c 87 § 1; 1891 c 30 § 2; Code 1881 § 15; 1879 p 122 § 1; 1854 p 131 § 3; RRS § 191.]

4.08.100 Action to recover purchase money on land—Final judgment. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered. [Code 1881 § 19; 1877 p 6 § 19; 1854 p 219 § 490; RRS § 195.]

4.08.110 Action by public corporations. An action at law may be maintained by any county, incorporated town, school district or other public corporation of like character, in its corporate name, and upon a cause of action accruing to it, in its corporate character and not otherwise, in any of the following cases:

(1) Upon a contract made with such public corporation;

(2) Upon a liability prescribed by law in favor of such public corporation;

(3) To recover a penalty or forfeiture given to such public corporation;

(4) To recover damages for an injury to the corporate rights or property of such public corporation. [1953 c 118 § 1. Prior: Code 1881 § 661; 1869 p 154 § 601; RRS § 950.]

4.08.120 Action against public corporations. An action may be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the

(2006 Ed.)

ing charge of settlement of any estate, applies to the court for an order allowing a claim to be compromised and settled for less than its face value, the court shall appoint a day not less than 5 days after such application for hearing the same, unless for good cause shown less time should intervene, and direct the giving of such notice as may be deemed proper.

[Amended effective September 1, 1989.]

RULE 98.10W ESTATES—RECEIVERSHIP—REPORTS

All reports of receivers which involve an accounting shall be filed at least 10 days before the hearing. On filing and presentation of such report the court will appoint a time for hearing the same, and will direct such notice to be given as will most likely advise all interested parties of such hearing.

RULE 98.12W ESTATES GENERALLY—FEES

Before compensation shall be allowed to any personal representative, guardian, or attorney in connection with any probate matter or proceeding, or to any receiver or an attorney for a receiver, and before any agreement therefor shall be approved, the amount of compensation claimed shall be definitely and clearly set forth in the application therefor, and all parties interested in the matter shall be given notice of the amount claimed in such manner as shall be fixed by statute, or, in the absence of statute, as shall be directed by the court; unless such application be filed with or made a part of a report or final account of such personal representative, guardian, receiver, or attorney.

[Amended effective September 1, 1989.]

RULE 98.16W ESTATES—GUARDIANSHIP—SETTLEMENT OF CLAIMS OF MINORS AND INCAPACITATED PERSONS

(a) Approval of Settlement Required. In every settlement of a claim, whether or not filed in court, involving the beneficial interest of an unemancipated minor or a person determined to be disabled or incapacitated under RCW 11.88, the court shall determine the adequacy of the proposed settlement on behalf of such affected person and reject or approve it. If a suit for recovery on behalf of the affected person has been previously maintained, then the petition shall be filed in that county, or if no such suit exists, then in the county where the affected person resides, unless either court orders otherwise.

(b) Petition. The petition for approval of settlement on behalf of the affected person shall contain, as a minimum and to the full extent known:

- (1) the affected person's full name and date of birth;
- (2) the general identification and relationship of others having claims or potential claims arising from the same matters and identity of their counsel;

(3) the description and amount of all liens, subrogation or reimbursement claims, fees, bills, costs or expenses connected with the affected person's claim;

(4) the description and amount of all liens, reimbursements, fees, costs or expenses requested to be paid from the settlement funds to be deposited with the court (or the maximum claimed for reimbursement if any item is being disputed or negotiated further), including a columnar listing of all amounts to be received, all amounts to be paid or the maximum claimed and concluding with the net amount of money or other property remaining for the affected person.

(c) Appointment, Role and Termination of the Settlement Guardian ad Litem; Exceptions to Appointment.

(1) Upon filing of the petition, the court shall appoint a Settlement Guardian ad Litem to assist the court in determining the adequacy of the proposed settlement. The Settlement Guardian ad Litem shall conduct an investigation and file a written report with the court with recommendation regarding approval and final disposition within 45 days of appointment or such other time as the court may order. The court, if appropriate under existing law, may order that all or part of the report and contents shall be confidential or sealed. Upon filing of the report and appearing at hearings as may be required, the Settlement Guardian ad Litem is exonerated from further duties unless otherwise ordered by the court.

(2) The court may dispense with the appointment of the Settlement Guardian ad Litem if by written finding the court determines a guardian ad litem, a guardian, or limited guardian has been previously appointed or if the court affirmatively finds that the affected person is represented by independent counsel, so long as the guardian ad litem, guardian, limited guardian, or independent counsel has the qualifications which would be required for a Settlement Guardian ad Litem and neither has nor represents interests in conflict with those of the affected person which would not be allowed for a Settlement Guardian ad Litem. Independent counsel's fee interest in the claim, if allowed by the Rules of Professional Conduct, is not a disqualifying interest. If a Settlement Guardian ad Litem is not required, the independent counsel, guardian ad litem, guardian or limited guardian shall file the report.

(d) Qualifications of Settlement Guardian ad Litem. The Settlement Guardian ad Litem shall be an attorney with at least five years of pertinent legal experience and such other qualifications as the court may require. The Settlement Guardian ad Litem shall neither have nor represent any interest in conflict with the affected person, including but not limited to the conflicting interests of parents or others legally responsible for medical care of the affected person.

(e) Report of Settlement Guardian ad Litem. The report of the Settlement Guardian ad Litem or other person authorized above shall include a description, in

depth appropriate to the settlement, of at

(1) the background of the work involved parents

(2) a description of persons interviewed;

(3) a description of the person's potential

(4) a description of general treatment received support

(5) a discussion of the settlement including

(6) a discussion of the settlement and entities;

(7) an identification of sources for payment

(8) a discussion of the lien, subrogation, any suggested reimbursement, the full amount of the claim;

(9) an identification of the settlement including any

(10) a discussion of the claim proceeding claimants, if any

(11) a discussion of the proposed settlement

(12) a discussion of the expenses and

(13) a discussion of the requested disbursement

(14) a statement of the fees and the fees of the Settlement Guardian ad Litem

(15) a discussion of the presence of the Settlement Guardian ad Litem Petition;

(16) a statement of the settlement submitted for

(f) At the settlement is fees, costs, and shall be considered by the court by local or waive the Settlement guardian

(g) Attorney fees, costs of the settlement, otherwise, shall

t of all liens, subroga-
fees, bills, costs or
ected person's claim;
nt of all liens, reim-
s requested to be paid
eposited with the court
bursement if any item
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Termination of the Set- tlement and Exceptions to Appoint-

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a written report with
regarding approval and
of appointment or such
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ardian ad Litem. The
dian ad Litem or other
nclude a description, in

depth appropriate to the magnitude of injuries and
settlement, of at least:

- (1) the background of the appointment and qualifica-
tions of the writer including any relationship with
involved parents, guardians, insurers or attorneys;
 - (2) a description of the investigation conducted, the
persons interviewed and the documents reviewed, if
any;
 - (3) a description of the incident and the affected
person's potential legal claims;
 - (4) a description of the affected person's injuries,
general treatment, diagnosis and prognosis attaching a
recent supporting medical report or office record;
 - (5) a discussion of the damages potentially recovera-
ble including identification of all special damages;
 - (6) a discussion of the potential liability of all persons
and entities;
 - (7) an identification of other insurance or collateral
sources for payment of any bills or expenses;
 - (8) a discussion and recommendation regarding any
lien, subrogation or reimbursement claims, including
any suggested retention of an attorney's trust account of
the full amount claimed until the final resolution of such
claim;
 - (9) an identification of all other claims, specifically
including any claims held by other family members;
 - (10) a discussion of any proposed apportionment of
claim proceeds among family members or unrelated
claimants, if any;
 - (11) a discussion and recommendation regarding the
proposed settlement form, documents and amounts;
 - (12) a discussion and recommendation regarding the
expenses and fees for which payment is requested;
 - (13) a discussion and recommendation regarding the
requested disposition of net proceeds;
 - (14) a statement of time spent, expenditures made
and the fees and costs requested by the Settlement
Guardian ad Litem;
 - (15) a discussion and recommendation regarding the
presence of the affected person and the Settlement
Guardian ad Litem at any court hearings on the
Petition;
 - (16) a statement as to whether the Petition has been
submitted for approval in any other jurisdiction.
- (f) At the time the petition for approval of the
settlement is heard, the allowance and taxation of all
fees, costs, and other charges incident to the settlement
shall be considered and disposed of by the court. The
court by local rule or by specific direction, may require
or waive the presence of the affected person or the
Settlement guardian ad Litem.
- (g) **Attorney's Fees and Costs.** Any attorney claim-
ing fees, costs or other charges incident to representa-
tion of the affected person, from the claim proceeds or
otherwise, shall file an affidavit or declaration under

RCW 9A.72.085 in support thereof. Copies of an
affidavit or declaration must be attached to the affidavit
or declaration.

(h) **Deposit in Court and Disbursements.** Except
for any structured portion of a settlement, the total
judgment or total settlement shall be paid into the
registry of the court, or as otherwise ordered by the
court. All sums deductible therefrom, including costs
attorney's fees, hospital and medical expenses, and any
other expense, shall be paid upon approval of the court.

(i) **Form for Payment of Remaining Funds.** Check
for funds payable to the affected person may be made
out by the clerk jointly to the depository bank, trust
company, or insured financial institution and to the
independent attorney for the affected person, guardian
or limited guardian, or trustee, and deposit shall be
made to the trust or into a blocked account for the
affected person with provision that withdrawals cannot
be made except as provided in the trust instrument or as
ordered by the court. A deposit receipt to that effect
must timely be filed with the court by the payee.

(j) **Control and Orders for Remaining Funds.** In
calculating the amount remaining from a structured
settlement, if the settlement required court approval
only because the affected person was an unemancipated
minor, then only the payments received and to be
received before attaining majority age are counted. All
orders directing funds to a blocked account should
recite that the funds are payable upon further order of
the court or to the affected person at his or her age of
majority, which date should be specified. Upon ap-
proval of settlement and payment of all authorized fees,
bills and expenses, the court shall order one of the
following actions:

(1) **\$25,000 or Less.** If the money or the value of
other property remaining after deduction for all ap-
proved fees, bills and expenses is \$25,000 or less, the
court shall require that:

(A) the money be deposited in a bank or trust
company or be invested in an account in an insured
financial institution for the benefit of the affected
person, subject to withdrawal only upon the order of
the court as a part of the original proceeding; or

(B) the money or property be paid to a duly
appointed and qualified guardian or limited guardian;
or

(C) the money be placed in trust, subject to the
conditions set forth in subsection (3).

(2) **More than \$25,000.** If the money or the value of
other property remaining after deduction for all ap-
proved fees, bills and expenses exceeds \$25,000, the
court in the order or judgment shall:

(A) if there is an existing or newly created guard-
ian or limited guardian who approves, require that
the money be deposited in a bank or trust company or
be invested in an account in an insured financial
institution for the benefit of the affected person,

RULES FOR SUPERIOR COURT

subject to withdrawal only upon the order of the court handling the guardianship or limited guardianship;

(B) if there is no guardian or limited guardian of the affected person or no approval under (A), the court in the order or judgment shall require that either a guardian or limited guardian be appointed, or

(C) the money or other property be placed in trust, subject to the conditions set forth in subsection (3).

(3) *Conditions for Use of Trust.* A trust established pursuant to this rule under subsection (1) or (2) must meet the following requirements:

(A) The selection of the trustee(s) and the terms of the trust shall be subject to the court's approval;

(B) No family member of the affected person, or other potential residual beneficiary of the trust, shall be approved by the court as a sole trustee;

(C) A bonded or insured fiduciary shall be designated as sole trustee or as co-trustee with principal responsibility for financial management of the trust estate;

(D) The fiduciary shall prepare an annual statement of income, expenses, current assets, and fees charged; shall deliver the statement to any co-

trustees, the beneficiary, and the beneficiary's personal representative; and shall present the statement for review and approval by the court having jurisdiction over the beneficiary;

(E) No family member or potential residual beneficiary who serves as a co-trustee shall exercise discretionary authority over individual expenditures from the trust that would bring direct or indirect benefit to that individual; and

(F) The administration of the trust shall be subject to the continuing jurisdiction of the appropriate court.

(k) *Bond.* Unless all funds are to be placed in a blocked account or court approved trust, sufficient bond shall be required for guardians and limited guardians to the extent required by guardianship law.
[Amended effective July 1, 1972; July 1, 1974; September 1, 1984; September 1, 1989; April 8, 1997.]

RULE 98.20W ESTATES—GUARDIANSHIPS—AUTHORIZATION OF EXPENDITURES [RESCINDED]

[Rescinded effective September 1, 1989.]

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all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure.

(2) Proof of the service or mailing required in this section must be made by affidavit or declaration filed at or before the hearing. [1999 c 42 § 304.]

11.96A.115 Discovery. In all matters governed by this title, discovery shall be permitted only in the following matters:

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court. [2006 c 360 § 11.]

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.96A.120 Application of doctrine of virtual representation. (1) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

(2) Any notice requirement in this title is satisfied if notice is given as follows:

(a) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse, distributees, heirs, issue, or other kindred of the person; and

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and

(2006 Ed.)

classes of persons who might take on the happening of the additional future event.

(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(4) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented. [2001 c 203 § 11; 1999 c 42 § 305.]

11.96A.130 Special notice. Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150. [1999 c 42 § 306.]

11.96A.140 Waiver of notice. Notwithstanding any other provision of this title, notice of a hearing does not need to be given to a legally competent person who has waived in writing notice of the hearing in person or by attorney, or who has appeared at the hearing without objecting to the lack of proper notice or personal jurisdiction. The waiver of notice may apply either to a specific hearing or to any and all hearings and proceedings to be held, in which event the waiver of notice is of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy of the notice of revocation of the waiver to the other parties. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice of the hearing waive the notice or appear at the hearing without objecting to the lack of proper notice or personal jurisdiction, the court may hear the matter immediately. A guardian of the estate or a guardian ad litem may make the waivers on behalf of the incapacitated person, and a trustee may make the waivers on behalf of any competent or incapacitated beneficiary of the trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make the waiver of notice on behalf of the person. [1999 c 42 § 307.]

11.96A.150 Cost—Attorneys' fees. (1) Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This statute [section] shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of *RCW 11.88.090(9). [1999 c 42 § 308.]

*Reviser's note: RCW 11.88.090 was amended by 1999 c 360 § 1, changing subsection (9) to subsection (10).

11.96A.160 Appointment of guardian ad litem. (1)

The court, upon its own motion or upon request of one or more of the parties, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, person whose identity or address is unknown, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) The court-appointed guardian ad litem supersedes the special representative if so provided in the court order.

(3) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96A.090 with notice as provided in this section and RCW 11.96A.110.

(4) The guardian ad litem is entitled to reasonable compensation for services. Such compensation is to be paid from the principal of the estate or trust whose beneficiaries are represented. [1999 c 42 § 309.]

11.96A.170 Trial by jury. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If a jury is not demanded, the court shall try the issues, and sign and file its findings and decision in writing, as provided for in civil actions. [1999 c 42 § 310.]

11.96A.180 Execution on judgments. Judgment on the issues, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1999 c 42 § 311.]

11.96A.190 Execution upon trust income or vested remainder—Permitted, when. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1999 c 42 § 312.]

11.96A.200 Appellate review. An interested party may seek appellate review of a final order, judgment, or decree of the court respecting a judicial proceeding under this title. The review must be done in the manner and way provided by law for appeals in civil actions. [1999 c 42 § 313.]

11.96A.210 Purpose. The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The

[Title 11 RCW—page 102]

procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law. [1999 c 42 § 401.]

11.96A.220 Binding agreement. RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement. [1999 c 42 § 402.]

11.96A.230 Entry of agreement with court—Effect.

(1) Any party, or a party's legal representative, may file the written agreement or a memorandum summarizing the written agreement with the court having jurisdiction over the estate or trust. The agreement or a memorandum of its terms may be filed within thirty days of the agreement's execution by all parties only with the written consent of the special representative. The agreement or a memorandum of its terms may be filed after a special representative has commenced a proceeding under RCW 11.96A.240 only after the court has determined that the special representative has adequately represented and protected the parties represented. Failure to complete any action authorized or required under this subsection does not cause the written agreement to be ineffective, and the agreement is nonetheless binding and conclusive on all persons interested in the estate or trust.

(2) On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust. [2001 c 14 § 2; 1999 c 42 § 403.]

11.96A.240 Judicial approval of agreement. Within thirty days of execution of the agreement by all parties, the special representative may note a hearing for presentation of the written agreement to a court of competent jurisdiction. The special representative shall provide notice of the date and date of the hearing to each party to the agreement if the address is known, unless such notice has been waived. Notice of mailing or delivery of the notice must be filed with the court. At such hearing the court shall review the agreement.

(a) Shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order;

(b) May by local court rule accept only certified funds or cash as payment; and

(c) Shall accept only certified funds or cash for five years in all cases after one check has been returned for nonsufficient funds or account closure.

(4) The parties affected by the order shall inform the registry through which the payments are ordered to be paid of any change of address or of other conditions that may affect the administration of the order. [1994 c 230 § 2; 1989 c 360 § 11. Prior: 1987 c 435 § 15; 1987 c 363 § 5; 1983 1st ex.s. c 45 § 3; 1973 1st ex.s. c 157 § 12.]

Effective date—1987 c 435: See RCW 26.23.900.

26.09.135 Order or decree for child support—Compliance with RCW 26.23.050. Every court order or decree establishing a child support obligation shall be entered in compliance with the provisions of RCW 26.23.050. [1987 c 435 § 16; 1986 c 138 § 1; 1984 c 260 § 21.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

26.09.138 Mandatory assignment of public retirement benefits—Remedies exclusive. (1) Any obligee of a court order or decree establishing a spousal maintenance obligation may seek a mandatory benefits assignment order under chapter 41.50 RCW if any spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars, or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems.

(2) Any court order or decree establishing a spousal maintenance obligation may state that, if any spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars, or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order under chapter 41.50 RCW without prior notice to the obligor. Any such court order or decree may also, or in the alternative, contain a provision that would allow the department to make a direct payment of all or part of a withdrawal of accumulated contributions pursuant to RCW 41.50.550(3). Failure to include this provision does not affect the validity of the court order or decree establishing the spousal maintenance, nor does such failure affect the general applicability of RCW 41.50.500 through 41.50.650 to such obligations.

(3) The remedies in RCW 41.50.530 through 41.50.630 are the exclusive provisions of law enforceable against the department of retirement systems in connection with any action for enforcement of a spousal maintenance obligation ordered pursuant to a divorce, dissolution, or legal separation, and no other remedy ordered by a court under this chapter shall be enforceable against the department of retirement systems for collection of spousal maintenance.

(4)(a) Nothing in this section regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an ex spouse to receive direct payment of retirement benefits payable pursuant to:

court decree of dissolution or legal separation; or (ii) any court order or court-approved property settlement agreement; or (iii) incident to any court decree of dissolution or legal separation, if such dissolution orders fully comply with RCW 41.50.670 and 41.50.700, or as applicable, RCW 2.10.180, 2.12.090, *41.04.310, 41.04.320, 41.04.330, **41.26.180, 41.32.052, 41.40.052, or 43.43.310 as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991.

(b) Persons whose dissolution orders as defined in RCW 41.50.500(3) were entered between July 1, 1987, and July 28, 1991, shall be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders filed with the department comply or are amended to comply with RCW 41.50.670 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, **41.26.180, 41.32.052, 41.40.052, or 43.43.310. [1991 c 365 § 24; 1987 c 326 § 26.]

Reviser's note: *(1) RCW 41.04.310, 41.04.320, and 41.04.330 were repealed by 1987 c 326 § 21, effective July 1, 1987.

** (2) RCW 41.26.180 was recodified as RCW 41.26.053 pursuant to 1994 c 298 § 5.

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 326: See RCW 41.50.901.

26.09.140 Payment of costs, attorney's fees, etc. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name. [1973 1st ex.s. c 157 § 14.]


26.09.150 Decree of dissolution of marriage, legal separation, or declaration of invalidity—Finality—Appeal—Conversion of decree of legal separation to decree of dissolution—Name of party. A decree of dissolution of marriage, legal separation, or declaration of invalidity is final when entered, subject to the right of appeal. An appeal which does not challenge the finding that the marriage is irretrievably broken or was invalid, does not delay the finality of the dissolution or declaration of invalidity and either party may remarry pending such an appeal.

No earlier than six months after entry of a decree of legal separation, on motion of either party, the court shall convert the decree of legal separation to a decree of dissolution of marriage. The clerk of court shall complete the certificate as provided for in *RCW 70.58.200 on the form provided by the department of health. On or before the tenth day of each

APPENDIX "F":

Flaherty v. Flaherty, 50 Wash.2d 393, 312 P.2d 205 (1957);

In re Dill, 60 Wash.2d 148, 373 P.2d 541 (1962).

 West Reporter Image (PDF)

50 Wash.2d 393, 312 P.2d 205

[View Washington Reports version](#)

Supreme Court of Washington, Department 2.
Eleanor FLAHERTY, Respondent,

v.

John G. FLAHERTY, Appellant.
No. 33682.

June 6, 1957.

Rehearing Denied Sept. 4, 1957.

A default divorce decree was entered in favor of wife. The Superior Court, King County, William J. Wilkins, J., entered an order denying motion of divorced husband to vacate the divorce decree, and the divorced husband appealed. The Supreme Court, Weaver, J., held that statute providing that when an insane person is a party to an action in the Superior Courts he shall appear by guardian, or if he has no guardian, or, in opinion of court, guardian is an improper person, court shall appoint one to act as guardian ad litem, was not satisfied, on motion by divorced husband to vacate divorce decree at time when divorced wife was mentally incompetent, by participation of attorney, who had been counsel for divorced wife in the divorce proceedings, or by the subsequent appointment of such attorney as divorced wife's guardian ad litem to represent her 'in all subsequent proceedings herein'. Order reversed.

West Headnotes

[1] [KeyCite Notes](#)



[257A Mental Health](#)

[257AV Actions](#)

[257Ak485 Guardian Ad Litem or Next Friend](#)

[257Ak488 k. Necessity of Appointment.](#) [Most Cited Cases](#)

Where divorced husband and his counsel knew at time of hearing of motion of divorced husband to vacate divorce decree that divorced wife was mentally incompetent, it was incumbent on divorced husband and his counsel to advise the judge of the condition of the divorced wife. [RCW 4.08.060](#); [Canons of Professional Ethics](#), rule 15.

[2] [KeyCite Notes](#)



[257A Mental Health](#)

[257AV Actions](#)

[257Ak485 Guardian Ad Litem or Next Friend](#)

[257Ak489 k. Time for Appointment and Conditions Precedent.](#) [Most Cited Cases](#)

Statute providing that when an insane person is a party to an action in the Superior Courts he shall appear by guardian, or if he has no guardian, or, in opinion of court, guardian is an improper person, court shall appoint one to act as guardian ad litem, was not satisfied, on motion by divorced husband to vacate divorce decree at time when divorced wife was mentally incompetent, by participation of attorney, who had been counsel for divorced wife in the divorce proceedings, or by the subsequent appointment of such attorney as divorced wife's guardian ad litem to represent her "in all subsequent proceedings herein". [RCW 4.08.060](#).

[3] KeyCite Notes



257A Mental Health

257AV Actions

257Ak518 k. Costs. Most Cited Cases

Where divorced husband and his counsel, on motion by divorced husband to vacate divorce decree, did not comply with duty of pointing out that divorced wife was mentally incompetent, so that a guardian ad litem could have been appointed for divorced wife, and at second hearing divorced wife's former counsel and her two brothers were present, but did not request the appointment of a guardian ad litem for her, each party was required to bear his own costs on appeal by divorced husband from order denying motion to vacate divorce decree. RCW 4.08.060.

***393 **206** Claire Wheeler Seltzer, Seattle, for appellant.

Neal Clark, Kent, guardian ad litem, Geo. H. Rummens, Kenneth P. Short, Paul R. Cressman, R. M. Oswald, Seattle, for respondent.

WEAVER, Justice.

June 18, 1955, plaintiff Eleanor Flaherty commenced an action for divorce against John G. Flaherty. Mr. Flaherty signed and acknowledged a written admission of service of the summons and complaint. June 28, 1955, the parties entered into a property settlement agreement, which was approved by the court when a default decree of divorce was entered on September 20, 1955, by Judge William J. Wilkins.

It is not disputed that Mrs. Flaherty had a serious heart condition before the decree of divorce was entered. November 6, 1955, Mrs. Flaherty suffered a severe stroke. Her mind remained clear until about November 9. She was taken to ***394** Harborview hospital November 17, 1955, and was still there at the time of a subsequent hearing, which we will describe later.

A close friend of Mrs. Flaherty described her mental condition as follows:

'Q. What is the condition of her mind now? A. Well, she is-in some things it is clear, but most of her mind is blocked from that blood clot, and nothing goes through one way or the other. There are certain little things around the edge of it, so to speak, she is clear on, but the rest of it is blocked.' Mrs. Flaherty's brother testified:

'Q. And how long have you felt that she was in need of a guardian? A. Well, prior to November 17, about a week. I heard she was in pretty bad shape, and my wife and I had gone over there, just prior to that even. And her speech seemed to be from a paralytic stroke impaired a little. And she kept getting worse. And I stayed there with her night and day. And my brother stayed there with her some. My wife wasn't able to go over there. She has arthritis. And the 17th of November, I just had to do something. I called the ambulance and took her to the hospital. I asked her permission different times, but *she couldn't talk*. But she seemed to get excited when I would say that. But, finally, I just thought that I had left it go too long already. And I took the matter in my own hands and called an ambulance, and forced her to go.' (Italics ours.)

November 18, 1955, the day after Mrs. Flaherty was taken to the hospital, Mr. Flaherty signed an affidavit, and his counsel filed a motion to vacate the decree in the divorce case. At that time, Mr. Flaherty knew that his wife had had a stroke. The same day, the presiding judge issued a show cause order returnable December 1, 1955.

Mrs. Flaherty's brother returned to her place of abode, shortly after he took her to the hospital, in order to get some of her property to protect it from theft. As he was leaving, a deputy sheriff drove up to the place.

'* * * I stopped, and walked back, and asked if he wanted to see Mrs. Flaherty. And he said he had

some papers to serve on her. I asked him what they were. He said it was an annulment of the divorce. *I told him that my *395 sister was, practically, like a baby at the present time; she couldn't talk; couldn't make herself understood.* And he didn't give me any details of the paper, but he said 'Well, nothing to do but take them back to the attorney.' (Italics ours.)

November 25, 1955, Mrs. Flaherty was served with the show cause order. It is undisputed that she was served in the hospital and that her condition was as we have **207 described it. Although the affidavit in support of the motion to vacate the decree of divorce alleged that Mr. Flaherty's signature to the written admission of service of summons and complaint 'was procured by false representation and by undue influence of the attorney Neal Clark [counsel for Mrs. Flaherty]' as well as other charges of unprofessional conduct by Mr. Clark, nothing was served upon him.

Mr. Flaherty's counsel stated:

'My conception of my professional duty is to serve my client within the requirements. The requirement in this procedure is that this woman must be served. *I knew she was in a hospital.* I wanted the court to know that. We were very sorry. We want to get her out of that hospital if possible, and out of the county hospital. We knew she is, necessarily, a party. *She has to be served, there, just as incompetents have to be served.*' (Italics ours.)

Mrs. Flaherty had not been able to read since her stroke on November 6. The papers served upon her were not disclosed to anyone capable of giving them attention until after December 1.

On that date, Mr. Flaherty and his counsel presented themselves to the court, presided over by Judge George Revelle. Although counsel announced she was prepared to produce testimony, the court treated the hearing as a default matter. The next day, December 2, 1955, findings of fact, conclusions of law, and judgment vacating the decree of divorce were entered. The court found that Mr. Flaherty had not been served with summons and complaint; that his written admission of service had been secured by false representations; and that plaintiff (Mrs. Flaherty) had not given oral testimony in open court in support of her action for divorce.

*396 Judge Wilkins and Judge Revelle then learned, for the first time, that they had been acting independently and in an inconsistent manner in substantially the same matter.

December 9, 1955, Judge Wilkins held a rehearing on Mr. Flaherty's motion to vacate the divorce decree secured by Mrs. Flaherty. On the same day, Judge Revelle entered an order setting aside his order of December 2, 1955, vacating the divorce decree of September 20, 1955. The order recites that Mrs. Flaherty was incompetent when served with the show cause order and that

'* * * no guardian ad litem was requested upon the hearing of said order to show cause and plaintiff's [Mrs. Flaherty's] interests were unprotected * * *.'

At the close of the testimony on December 9, Judge Wilkins announced that he would deny Mr. Flaherty's motion to vacate the divorce decree. The record amply supports the findings of fact, conclusions of law, and order denying Mr. Flaherty's petition to vacate the divorce decree, which were entered December 16, 1955. Oral notice of appeal was given by counsel for Mr. Flaherty.

In Townsend v. Price, 1898, 19 Wash. 415, 416, 53 P. 668, 669, it was pleaded that defendant, when process was served upon him in the state of Missouri, was confined to his bed in his last sickness, was not in a condition to attend to any business, and was *non compos mentis*. This court said:

'If the physical and mental condition of this defendant was known to the plaintiff, as is alleged in the answer, both at the time service was obtained and when judgment was rendered, it was incumbent on the plaintiff then to have suggested it to the court, in order that a guardian *ad litem* might be appointed.'

The following year, the legislature enacted Laws of 1899, chapter 91, § 1, p. 144, now codified as RCW 4.08.060. It provides:

'When an insane person is a party to an action in the superior courts he shall appear by guardian, or if he has no guardian, or in the opinion of the **208 court the guardian is an improper person, the court shall appoint one to act as guardian *ad litem* * * *.'



*397 [1] The incompetency of Mrs. Flaherty being known to Mr. Flaherty and to his counsel, Claire Wheeler Seltzer, it was incumbent upon them to advise Judge Revelle of her condition. In *re Miller's Guardianship*, 1946, 26 Wash.2d 202, 173 P.2d 538 illustrates the use of this procedure and our approval of it. In *Potter v. Potter*, 1950, 35 Wash.2d 788, 215 P.2d 704 we remanded the cause in order that a guardian *ad litem* might be appointed to represent the interest of an incompetent. It is apparent that this rule is broader than counsel's stated concept of her professional duty to her client. See Canon of Professional Ethics 15, 34A Wash.2d 131.

Although the *need* of a guardian or guardian *ad litem* for the protection of Mrs. Flaherty's interests and property was mentioned several times in the hearing before Judge Wilkins on December 9, 1955, we can find no place in the record which even suggests that such an appointment was made. Thus, the hearing before Judge Wilkins suffers from the same infirmity as the hearing before Judge Revelle.



[2] The provisions of the statute are not satisfied by the participation before Judge Wilkins of Mr. Neal Clark, counsel for Mrs. Flaherty in the divorce proceedings. Neither does his appointment as guardian *ad litem* on January 27, 1956, to represent her 'in all *subsequent* proceedings herein,' supply the omission.

After this appeal had been taken, counsel stipulated that

'Arthur W. Davies has been discharged and H. C. Tingvall has been appointed and qualified in his place as guardian of the person and estate of Eleanor Flaherty, and that by reason thereof it is therefore stipulated that H. C. Tingvall, as guardian of the person and estate of Eleanor Flaherty, may be substituted for Arthur W. Davies as party respondent * * *.'

It appears affirmatively that Mr. Davies was not Mrs. Flaherty's guardian on December 9, 1955.



[3] In the original hearing, before Judge Revelle, there was a duty, as we have pointed out, upon Mr. Flaherty and his counsel to disclose to the court facts which would have resulted in the appointment of a guardian *ad litem*. In the *398 second hearing, before Judge Wilkins, there were those present (Mrs. Flaherty's former counsel and her two brothers) who might have requested the appointment of a guardian *ad litem*. For this reason, each party will bear his own costs on this appeal.


The order appealed from is reversed.

HILL, C. J., and MALLERY, DONWORTH, and OTT, JJ., concur.

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FLAHERTY v. FLAHERTY
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60 Wash.2d 148, 372 P.2d 541

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Supreme Court of Washington.
In the Matter of the Welfare of Steven Douglas DILL and Jennie Shirley Dill.
Francis H. DILL, Relator,
v.
The SUPERIOR COURT of the State of Washington FOR KING COUNTY, Robert F. Utter, Judge Pro Tem
of the Juvenile Court, Respondent.
No. 36409.
June 14, 1962.

Proceeding by parents for termination of the dependency of their children. The Juvenile Court of King County, Robert F. Utter, J., entered an order of deprivation as to the daughter and placed her for adoption and ordered that the 18 month old son remain in a foster home until further order of the court. The mother brought an original proceeding in the Supreme Court on a writ of certiorari. The Supreme Court, Ott, J., held that the evidence merited a finding of parental unfitness, and that the mother, having been adjudicated mentally ill, could not be deprived of her parental right without the appointment of a guardian ad litem or a regularly appointed guardian. Order of deprivation reversed.

West Headnotes

[1] [KeyCite Notes](#)



↳ [211 Infants](#)

↳ [211VIII Dependent, Neglected, and Delinquent Children](#)

↳ [211VIII\(C\) Evidence](#)

↳ [211k175 Weight and Sufficiency](#)

↳ [211k181 k. Parental Unfitness or Incompetence. Most Cited Cases](#)
(Formerly 211k16.8)

The evidence, in parents' proceeding to terminate dependency of their children, merited finding of parental unfitness.

[2] [KeyCite Notes](#)



↳ [257A Mental Health](#)

↳ [257AV Actions](#)

↳ [257Ak484 k. Representation by General Guardian or Committee. Most Cited Cases](#)

↳ [257A Mental Health](#) [KeyCite Notes](#)



↳ [257AV Actions](#)

↳ [257Ak485 Guardian Ad Litem or Next Friend](#)

↳ [257Ak488 k. Necessity of Appointment. Most Cited Cases](#)

Court could not deprive mother of her parental right tm child, where mother had been adjudicated a mentally ill person and had been granted terminal leave from hospital and guardian ad litem or guardian had not been appointed. [RCWA 71.02.650](#); [RCW 4.08.060](#).

[3] KeyCite Notes 

257A Mental Health

257AV Actions

257Ak484 k. Representation by General Guardian or Committee. Most Cited Cases

257A Mental Health KeyCite Notes 

257AV Actions

257Ak485 Guardian Ad Litem or Next Friend

257Ak488 k. Necessity of Appointment. Most Cited Cases

Under mandatory statute, insane person can appear in court only by guardian ad litem or by regularly appointed guardian; guardian ad litem has complete statutory power to represent interests of ward. RCW 4.08.060.

[4] KeyCite Notes 

257A Mental Health

257AV Actions

257Ak484 k. Representation by General Guardian or Committee. Most Cited Cases

257A Mental Health KeyCite Notes 

257AV Actions

257Ak485 Guardian Ad Litem or Next Friend

257Ak486 k. Propriety of Representation. Most Cited Cases

The statutory mandate that insane person can appear in court only by guardian ad litem or by regularly appointed guardian is not satisfied when person under such legal disability is represented by attorney. RCW 4.08.060.

[5] KeyCite Notes 

102 Costs

102X On Appeal or Error

102k238 Acts or Omissions of Parties Affecting Right

102k238(1) k. In General. Most Cited Cases

Husband and his attorney should have apprised court that wife had been adjudicated mentally incompetent and was merely on terminal leave from hospital, and on reversal of order depriving husband and wife of parental rights for lack of guardian ad litem for wife, each party would bear his own costs of appeal. RCWA 71.02.650; RCW 4.08.060.

***148 **542** Thomas J. Isaac, Seattle, for relator.

Charles O. Carroll, Pros. Atty., Carolyn Reaber Dimmick, Deputy Pros. Atty., Seattle.
Mucklestone & Mucklestone, Patricia Mucklestone, Seattle, for respondent.

OTT, Judge.

Shirley and Francis Dill are the parents of Jennie Shirley Dill, born September 17, 1957, and Steven Douglas Dill, born November 23, 1960.

*149 December 12, 1960, a petition was filed in the Superior Court for King County alleging that Jennie and Steven Dill were dependent children, for the reason that their mother was currently in the hospital and their father could not care for them, and that there were no known relatives. Upon the filing of the petition, the judge of the juvenile court ordered the children into the temporary custody of the director of the Department of Public Assistance, in lieu of detention. March 22, 1961, the children were declared to be dependent, and wards of the court. The Department of Public Assistance was ordered to arrange for foster home care until further order of the court. Francis Dill was ordered to pay \$50 a month commencing at such date as the court should subsequently direct.

December 15, 1960, Shirley Dill was found to be mentally ill, and was committed to the Western State Hospital. July 5, 1961, she was granted a terminal leave from the hospital. October 3, 1961, Francis and Shirley Dill petitioned the court to terminate the dependency, alleging that 'the basis of the dependency * * * has been removed, so said children should be returned forthwith to petitioners.'

October 27, 1961, the Department of Public Assistance petitioned the court for an order of deprivation terminating the parents' rights to the children, alleging that the parents were morally and physically unfit to raise them, and that the children should be made available for adoption.

December 15, 1961, both petitions were heard by the court. The parents appeared in person and with their attorney, and the **543 department was represented by the King County Prosecuting Attorney's office.

The court entered findings of fact that the children had theretofore been declared dependent and were wards of the court, and that the parents were unfit to raise Jennie. It entered an order of deprivation as to her and placed her with the Medina Children's Service for adoption. It ordered that Steven (now eighteen months of age) remain in the foster home until further order of the court.

By this certiorari proceeding, the parents seek a review *150 of the order depriving them of their parental rights to Jennie.



[1] The parents first contend that the evidence does not merit a finding of parental unfitness. We do not detail the sordid evidence. The record sustains the trial court's factual determination in this regard.



[2] Did the status of Shirley Dill, when she appeared at the hearing without the appointment of a guardian ad litem or a regularly appointed guardian, authorize the court to enter the order of deprivation of her parental rights to Jennie? We answer the query in the negative.

December 15, 1960, Shirley Dill was adjudicated to be a mentally ill person. RCW 71.02.650 provides that a person adjudicated as mentally ill suffers legal disability until discharged from the hospital as recovered. The record discloses that Shirley Dill was granted a terminal leave from the hospital. She was not discharged as recovered, nor was there judicial restoration of her civil capacity. She was not represented by a regularly appointed guardian or a guardian ad litem.





[3] RCW 4.08.060 provides in part:

'When an insane person is a party to an action * * * he shall appear by guardian, or if he has no guardian * * * the court shall appoint one to act as guardian ad litem. * * *'

The statute is mandatory. A person under such legal disability can appear in court only by a guardian ad litem or by a regularly appointed guardian. A guardian ad litem has complete statutory power to represent the interests of the ward. Rupe v. Robison, 139 Wash. 592, 595, 247 P. 954, 47 A.L.R. 565

(1926). See, also, *In re Miller*, 26 Wash.2d 202, 173 P.2d 538 (1946).

[4]  [5]  The statutory mandate is not satisfied when the person under legal disability is represented by an attorney. *Flaherty v. Flaherty*, 50 Wash.2d 393, 312 P.2d 205 (1957). The fact of the wife's civil disability was known to her husband and his attorney. It was incumbent upon them to apprise the court of the wife's incapacity. *Flaherty v. Flaherty*, supra [p. 397, 312 P.2d 205].

***151** For the reasons stated, the order of deprivation is reversed. Each party will bear his own costs on this appeal. *Flaherty v. Flaherty*, supra [p. 398, 312 P.2d 205].

FINLEY, C. J., and DONWORTH, HUNTER, and HAMILTON, JJ., concur.

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IN RE DILL
60 Wash.2d 148, 372 P.2d 541

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IN THE COURT OF APPEALS, DIVISION II
COUNTY OF PIERCE, STATE OF WASHINGTON

In re the Marriage of:

NO. 32839-9-II

JOAN H. WRIGHT,

CERTIFICATE OF SERVICE

Petitioner,

and

ROBERT D. WRIGHT,

Respondent.

I certify that on the 26th day of March, 2007, I served a copy of the **Brief of Appellant** upon the following parties to this proceeding and their attorneys or authorized representatives, as listed below, via ABC Legal Messenger.

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DIVISION II
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STATE OF WASHINGTON
CLERK

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 26th day of March, 2007.

Christine M. Buoy
Christine M. Buoy